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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1950

No. 338

JACK B. TENNEY, THE SENATE FACT-FINDING COMMITTEE ON UN-AMERICAN ACTIVITIES (A CALIFORNIA LEGISLATIVE COMMITTEE), ET AL., PETITIONERS,

vs.

WILLIAM PATRICK BRANDHOVE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 27, 1950.

CERTIORARI GRANTED DECEMBER 11, 1950.

No. 12430

United States
Court of Appeals
For the Ninth Circuit.

WILLIAM PATRICK BRANDHOVE,

Appellant,

vs.

JACK B. TENNEY; THE SENATE FACT-FINDING COMMITTEE ON UN-AMERICAN ACTIVITIES, a California legislative committee; HUGH M. BURNS; NELSON S. DILWORTH; FRED H. KRAFT; LOUIS G. SUTTON, CLYDE A. WATSON and ELMER E. ROBINSON,

Appellees.

Transcript of Record

**Appeal from the United States District Court,
Northern District of California,
Southern Division.**

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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United States District Court for the Northern District of California, Southern Division

No. 28711H

WILLIAM PATRICK BRANDHOVE,

Plaintiff,

vs.

JACK B. TENNEY; THE SENATE FACT FINDING COMMITTEE ON UN-AMERICAN ACTIVITIES, a California legislative committee; HUGH M. BURNS; NELSON S. DILWORTH; FRED H. KRAFT; LOUIS G. SUTTON; CLYDE A. WATSON; and ELMER E. ROBINSON,

Defendants.

COMPLAINT FOR DAMAGES UNDER CIVIL RIGHTS ACT

Plaintiff complains of Defendants, and each of them, and for cause of action alleges:

1. The Action arises under the 14th Amendment to the Constitution of the United States, section 1, and under R.S. section 1979, U.S.C. Title 8, section 43, and under R.S. section 1980, U.S.C. Title 8, section 47 (3), and under sections 19 and 20 U.S. Criminal code, U S.C. Title 18, sections 51 and 52.

2. Plaintiff is a citizen of the United States and of the State of California; defendant the Senate Fact-Finding Committee on Un-American Activities is a legislative committee duly created under

the constitution of the State of California by California Senate Resolution No. 75, June 20, 1947, a copy of which resolution is marked Exhibit "A" attached hereto, referred to, incorporated in and made a part hereof by this reference; defendant Jack B. Tenney is, and at all times mentioned herein was the duly appointed chairman of said legislative committee, hereinafter called The Tenney Committee; defendants Hugh M. Burns, Nelson S. Dilworth, Fred H. Kraft, Louis G. Sutton and Clyde A. Watson, and each of them, are, and at all times hereinafter mentioned were duly appointed members of The Tenney Committee.

3. On January 28, 1949, plaintiff circulated a petition entitled: "A Protest Against a renewed Appropriation for the California Senate Committee on Un-American Activities (The Tenney Committee)" among the members of the Legislature of the State of California at the State Capitol in Sacramento. A copy of said petition is marked Exhibit "B," attached hereto, referred to, incorporated in and made a part hereof by this reference. The subject matter of said petition was stated therein as follows:

"I, William Patrick Brandhove, charge that the California Senate Committee on Un-American Activities (The Tenney Committee) used me as an instrument to smear Congressman Franck R. Havenner as a "Red" when he was a candidate for Mayor of San Francisco in 1947, and that the Republican machine in San Francisco and the campaign management of Elmer E. Robinson, Franck

Havenner's opponent, conspired with the Tenney Committee to this end."

and the purpose of said petition, as also stated therein, was that the California Legislature should not appropriate further funds for The Tenney Committee. While plaintiff was engaged in circulating said petition as aforesaid for approximately a period of two (2) hours, a subpoena was served upon him ordering him to appear as a witness at a hearing before The Tenney Committee in Sacramento, California, on the following day, to wit: January 29, 1949. Said subpoena did not refer to or state the purpose or object of said hearing or refer to or state the purpose or object of plaintiff's required testimony thereat. A copy of said subpoena is marked Exhibit "C." attached hereto, referred to, incorporated herein and made a part hereof by this reference.

4. On January 28, 1949, before the service of said subpoena on plaintiff, and after the content of said circulated petition had become known to defendant Jack B. Tenney, said defendant immediately communicated by telephone with defendant Elmer E. Robinson advising him of the charges contained in said petition and the stated purpose of same; then and there said defendants Jack B. Tenney and Elmer E. Robinson discussed ways and means of best thwarting the charges contained in said petition and defeating the purpose stated in said petition and agreed that a hearing should be held on the following day by The Tenney Committee whereat defend-

ant Elmer E. Robinson should appear as a voluntary witness and deny the truth of the charges with reference to him and his connection with the Tenney Committee contained in said circulated petition.

5. On the same day, to wit: January 28, 1949, after the circulating of said petition, defendants Jack B. Tenney and Hugh M. Burns, by telegrams to the District Attorneys of the City and County of San Francisco and the County of Alameda, State of California, signed by them as chairman and vice chairman of The Tenney Committee and acting on behalf of said committee demanded of each of said District Attorneys: "to either immediately charge Brandhove (plaintiff) with perjury or to take the matter before the San Francisco (Alameda) grand jury." Copies of said telegrams are marked Exhibit "D" and Exhibit "E" respectively, attached hereto, referred to, incorporated in and made a part hereof by this reference.

6. Pursuant to said subpoena plaintiff appeared before The Tenney Committee on the 29th day of January, 1949 and on that day a hearing was held by said committee. At said hearing defendant Elmer E. Robinson appeared as a voluntary witness. At said hearing all individual defendants except defendant Elmer E. Robinson, were sitting as members of the Tenney Committee.

7. Said hearing of The Tenney Committee on January 29, 1949, was held, as was known to all defendants, for the purpose and object of suppressing

the criticism of plaintiff in his circulated petition and the charges therein directed against The Tenney Committee and the individual defendants, to the end that said committee should obtain the appropriation of funds requested from the California Legislature.

8. In pursuance of said end The Tenney Committee and its members acted as judges and accused in the same cause at said hearing and held and conducted the same in an unfair, partial and unlawful manner. At said hearing defendant Elmer E. Robinson was permitted to and did make a lengthy unsworn statement first, and after having been sworn as a voluntary witness, was led by defendant Jack B. Tenney to and did answer the different charges contained in plaintiff's said petition whereby unbridled discretion was left to said defendant Elmer E. Robinson in the conduct of his self-justification. At said hearing specific questions were directed to plaintiff with regard to his personal affairs and acquaintances to which The Tenney Committee previously had obtained sworn answers from plaintiff. At said hearing defendant Jack B. Tenney read into the record of the hearing a false alleged criminal record of plaintiff and a newspaper article wherein an affidavit of plaintiff was called a "tissue of lies" and an alleged telephonic statement by the Chief Counsel of The Tenney Committee to defendant Jack B. Tenney "that Mr. Brandhove (plaintiff) was a liar." At said hearing plaintiff's counsel, although he was not summoned by The Tenney

Committee to appear at said hearing but was present thereat solely in his professional capacity as plaintiff's attorney, was called as a witness by said committee and interrogated at length about his private affairs, and when plaintiff's said counsel referred to decisions of the United States Supreme Court supporting the objections raised by plaintiff against said hearing and supporting plaintiff's refusal to answer questions thereat, said counsel was threatened with expulsion from the hearing room. A copy of the record of said hearing is marked Exhibit "F" attached to the original of this complaint, referred to, incorporated herein and made a part hereof by this reference. The written objections of plaintiff filed at said hearing are part of the record of said hearing. Upon said objections plaintiff refused to answer questions at said hearing.

9. At said hearing The Tenney Committee, by unanimous vote of its members, resolved that a criminal complaint be filed in the proper Court at Sacramento, California, because of plaintiff's refusal to answer questions at said hearing.

10. Such complaint charging plaintiff with the misdemeanor of violating section 9412 of the Government Code of the State of California, signed and sworn to by defendant Jack B. Tenney, was filed on January 31, 1949, in the Municipal Court of the City of Sacramento. Upon said complaint, plaintiff was arrested and imprisoned from the 1st day of February to the 15th day of February, 1949.

11. Plaintiff committed no public offense at said

hearing on the grounds that the resolution creating The Tenney Committee (Exhibit "A") if read into any criminal statute is in violation of the 14th Amendment of the Constitution of the United States for want of certainty; that said hearing on January 29, 1949, was not held for a legislative purpose; that said hearing was held for the purpose of suppressing the free exercise of constitutional rights of plaintiff, to wit: his rights of free speech and to petition the Legislature freely for redress of grievances; that the conduct of said hearing was in violation of due process of law in that the purpose or object of said hearing was not disclosed to plaintiff, and in that said hearing was not held in a fair and impartial manner as required under the 14th Amendment of the Constitution of the United States and as also expressly required under the resolution creating The Tenney Committee; that the questions asked of plaintiff at said hearing were not material and proper as required by section 9412 of the California Government code.

12. Plaintiff was tried with jury on said complaint on February 28, 1949, up to and including March 5, 1949, on which date the jury announced that the jurors could not agree on a verdict, the count being eleven (11) for acquittal and one (1) for conviction. Said cause was continued to March 9, 1949, on which date on motion of the prosecuting attorney the charge was dismissed and the plaintiff discharged.

13. The acts of defendants above set forth were done or participated in by said defendants with malice and intent to intimidate and silence plaintiff and deter and prevent him from effectively exercising his constitutional rights of free speech and to petition the Legislature for redress of grievances, and also to deprive him of the equal protection of the laws, due process of law, and of the enjoyment of equal privileges and immunities as a citizen of the United States under the law, and so did intimidate, silence, deter, and prevent and deprive plaintiff.

14. The acts of defendants except defendant Elmer E. Robinson were done under color of the authority conferred upon defendant The Tenney Committee by the Constitution of the State of California and the California Senate resolution adopted thereunder creating said committee (Exhibit "A"). All defendants including defendant Elmer E. Robinson conspired for all of the aforesaid purposes and acted in furtherance of said conspiracy in the manner hereinabove set forth.

15. By the conduct of defendants hereinabove set forth plaintiff has suffered great physical hardship and mental pain and anguish and has incurred expenses in the amount of ten thousand dollars ($10,000.00) for legal counsel, traveling, hotel accommodations, and other matters pertaining and necessary to his defense against said criminal complaint. Plaintiff also demands punitive damages.

Wherefore, plaintiff demands judgment against defendants, and each of them in the sum of Two hundred fifty Thousand dollars ($250,000.00) and costs.

/s/ MARTIN J. JARVIS,

/s/ ELMER P. DELANY,

/s/ RICHARD O. GRAW,

Attorneys for Plaintiff.

State of California,
City and County of San Francisco—ss.

William Patrick Brandhove, being first duly sworn, deposes and says: That he is the plaintiff named in the foregoing complaint; That he has read said complaint and knows the contents thereof, and that the same is true of his own knowledge except as to matters therein stated upon information and belief, and as to those matters he believes it to be true.

/s/ WILLIAM PATRICK BRANDHOVE.

Subscribed and sworn to before me this 17th day of March, 1949.

[Seal] /s/ R. M. SPILLANE,
Notary Public, in and for the City and County of San Francisco, State of California.

My Commission expires July 17, 1951.

EXHIBIT "A"

California Senate Resolution No. 75

(Adopted June 20, 1947)

Senate Resolution No. 75, as amended, Relative to the creation of a Senate Fact-Finding Committee on Un-American Activities, to investigate the activities of persons and groups known or suspected to be foreign dominated or controlled and to recommend legislation for their regulation.

Whereas, these are yet times of public danger. Subversive persons and groups are endangering our domestic unity so as to leave us unprepared to resist attack from without and within. Under color of the protection afforded by the Bill of Rights these persons and groups seek to destroy our freedom by force, violence, threats, undermining and sabotage, and to subject us to the comination of foreign powers and ideologies; and

Whereas, there is danger that the ordeal through which the Country has suffered to keep the pursuit of its ideals free may be in vain; and

Whereas, persons and groups, motivated by hatred of American ideals, our republican form of government and democratic processes, some bound together by allegiance to foreign powers, are even now seeking to achieve by subversion what we have so valiantly fought to sustain from force; and

Whereas, California, as one of the laboratories of this great Nation, may profitably study the problem within its boundaries, and enact pertinent legis-

lation therein, if facts are available therefor; and

Whereas, State legislation to meet the problem and to assist law enforcement officers can best be based on a thorough and impartial investigation by a competent and active legislative committee; now, therefore,

Be it Resolved by the Senate of the State of California,

That

1. The Senate Fact-Finding Committee on Un-American Activities is hereby created and authorized and directed to investigate, ascertain, study and analyze all facts directly or indirectly relating to the foregoing, to the activities of groups and organizations whose membership include persons who are members of organizations who have as their objectives, or part of their objectives, the overthrow of the governments of the State of California or of the United States by force and violence or other unlawful means, all organizations known or suspected to be dominated or controlled by a foreign power which activities affect the conduct of this State in national defense, the functioning of any state agency, unemployment relief and other forms of public assistance, educational institutions of this State supported in whole or in part by public funds, or any political program, or which may affect the conversion of the State from a wartime economy to a peacetime economy or affect the economic and social problems incidental thereto, including but not limited to the operation, effect, administration, enforce-

ment, and needed revision of any and all laws in any way bearing upon or relating to the subject of this resolution, and to report thereon to the Senate.

2. In addition to the foregoing, the Senate Fact-Finding Committee on Un-American Activities is authorized and directed to ascertain, study and analyze all facts relating to the activities of persons and groups known or suspected to be dominated or controlled by a foreign power, and who owe allegiance thereto because of religious, racial, political, ideological, philosophical, or other ties, including but not limited to the influence upon all such persons and groups of education, economic circumstances, social positions, fraternal and casual associations, living standards, race, religion, politics, ancestry and the activities of paid provocation and any other factors which may account for their conduct or condition their action, as well as the operation, effect, administration, enforcement and needed revision of any and all laws in any way bearing upon or relating to the subject of this resolution, and to report thereon to the Senate.

3. The committee shall consist of six members of the Senate appointed by the Committee on Rules thereof. Vacancies occurring or existing in the membership of the committee shall be filled by the appointing power.

4. The committee is authorized to act during this session of the Legislature, including any recess, and after final adjournment until the final adjourn-

ment of the 1949 Regular Session, with authority to file its final report not later than the last legislative day of that session.

5. The committee and its members shall have and exercise all of the rights, duties and powers conferred upon investigating committees and their members by the provisions of the Joint Rules of the Senate and Assembly and the Standing Rules of the Senate as they are adopted and amended from time to time, which provisions are incorporated herein and made applicable to this committee and its members.

6. The committee has the following additional powers and duties:

(a) To select a chairman and a vice chairman from its membership, and to employ and fix the compensation of a secretary and such clerical, investigative, expert and technical assistants as it may deem necessary.

(b) To contract with such other agencies, public or private, as it deems necessary for the rendition and affording of such services, facilities, studies and reports to the committee as will best assist it to carry out the purposes for which it is created.

(c) To cooperate with and secure the cooperation of county, city, city and county, and other local law enforcement agencies in investigating any matter within the scope of this resolution and to direct the sheriff of any county to serve subpoenas orders and other process issued by the committee.

(d) To report its findings and recommendations to the legislature and to the people from time to time and at any time, not later than herein provided.

(e) To do any and all other things necessary or convenient to enable it fully and adequately to exercise its powers, perform its duties, and accomplish the objects and purposes of this resolution.

(f) To create subcommittees from its membership, assigning to the subcommittee any study, inquiry, investigation or hearing which the committee itself has authority to undertake or hold, and the subcommittee for the purposes of this assignment shall have and exercise all of the powers conferred upon the committee limited by the express terms of the resolution or resolutions of the latter defining the powers and duties of the subcommittee, which powers may be withdrawn or terminated at any time by the committee.

(g) To adopt and from time to time amend such rules governing its procedure (including the fixing of its own quorum and the number of votes to take action on any matter) as may to it appear appropriate.

(h) To hold public hearings at any place in California at which hearings the people are to have an opportunity to present their views to the committee.

(i) To summon and subpoena witnesses, require the production of papers, books, accounts, reports,

documents, and records of every kind and description, to issue subpoenas and to take all necessary means to compel the attendance of witnesses and procure testimony.

(j) To report its findings and recommendations to the Legislature and to the people from time to time and at any time, not later than herein provided.

7. The committee, each of its members, and any representative of the committee thereunto authorized by the committee or by its chairman, is authorized and empowered to administer oaths.

8. Every department, commission, board, agency, officer and employee of the State Government, including the Legislative Counsel, the Attorney General and their subordinates, and of any political subdivision, county, city, or public district of or in this State shall furnish the committee any subcommittee, upon request, any and all such assistance, and information, records and documents as the committee or subcommittee deems proper for the accomplishment of the purposes for which the committee is created.

9. The committee, or a subcommittee or the chairman when authorized by a majority vote of the entire committee may meet outside the State with similar committees of Congress or of the several states.

10. The sum of thirty thousand dollars, or as much thereof as may be necessary, is hereby made

available from the Contingent Fund of the Senate for the expenses of the committee and its members and for any charges, expenses or claims it may incur under this resolution, to be paid from said Contingent Fund, and disbursed, after certification by the chairman of the committee, upon warrants drawn by the State Controller upon the State Treasurer.

Resolution read as Amended.

The roll was called and the resolution adopted by the following vote:

Ayes: Senators Breed, Burns, Busch, Crittenden, Cunningham, Desmond, Donnelly, Gordon, Hulse, Judah, Keating, Kraft, Mayo, McBride, McCormack, O'Gara, Parkman, Quinn, Rich, Slater, Sutton, Ward, Watson, Weybret, and Williams—25.

Noes: Senators Carter, Collier and Jesperson—3.

Adopted June 20, 1947.

EXHIBIT "B"

The Following Statement of William Patrick Brandhove Constitutes a Protest Against a Renewed Appropriation for the California Senate Committee on Un-American Activities. (The Tenney Committee):

I, William Patrick Brandhove, charge that the California Senate Committee on Un-American Activities (The Tenney Committee) used me as an

instrument to smear Congressman Franck R. Havenner as a "Red" when he was a candidate for Mayor of San Francisco in 1947; and that the Republican machine in San Francisco and the campaign management of Elmer E. Robinson, Franck Havenner's opponent, conspired with the Tenney Committee to this end.

My charges are supported by the following sequence of events:

1. In 1947, months in advance of the November election, I met with R. E. Coombs, Chief Counsel of the California Senate Committee on Un-American Activities, in his room at the St. Francis Hotel, San Francisco, and told him that I was going to announce my candidacy for member of the San Francisco Board of Supervisors; that my candidacy was intended to furnish me with a platform on which to make speeches against Communism, Communist supported candidates and Communist front organizations. Mr. Coombs then suggested that in the event Franck Havenner became a candidate for Mayor of San Francisco, my campaign program would be an ideal setup for smearing him as a "Red". At that time, I like many other people, was taken in by the previous "Red" frame-ups that Committees of this kind had made against Franck Havenner, and it was in all sincerity that I agreed to brand him as a candidate of the Communists. During this interview I mentioned to Mr. Coombs that I had no campaign funds, and that I had no sources of financial support. Mr. Coombs assured me that I should have no worry on that score, that,

in his own words, "campaign funds would come to me."

2. During the course of the campaign I covered many political meetings at which Elmer Robinson was present. At each of these meetings I made my smear talk against Franck Havenner. At one meeting when I approached Mr. Robinson, he warned me that we should not be seen speaking with each other. This surprised me as I did not consider that there was any collusion between him and me. Mr. Robinson suggested that we meet privately. This we did on several occasions, one of them being at Lake Merced, where we both withdrew from a political picnic to walk unseen in a sequestered spot along the lake. Mr. Robinson told me that I was doing good work and urged me to keep up the attacks on Franck Havenner. I then told Mr. Robinson that I had no money for campaign purposes and that my car had broken down.

3. Mr. Robinson referred me to Warnock Walsh, a member of his campaign committee, who handed me five twenty dollar bills and assured me that more would be forthcoming. Mr. Walsh then introduced me to a member of the campaign organization who was in charge of the campaign car pool. This gentleman sent me to Monnet and Gordon, a novelty supply company, which later was the only firm to be given a concession by the city administration for selling souvenirs at the Portola Festival. They immediately made available for me a 1942

Buick, Mr. Monnet's personal car. They also paid for its storage, gas and oil.

4. Several days later, a member of Elmer Robinson's campaign committee, who had represented me legally, turned over to me $500.

5. On one occasion I mentioned to Mr. Robinson that I would be willing to undertake the organization of waterfront headquarters for him. Mr. Robinson arranged for me to meet with Supervisor Dan Gallagher, who turned against Franck Havenner, when he (Gallagher) was not accepted by the liberal forces as a candidate for Mayor. Mr. Gallagher told me that waterfront headquarters were being set up by Harry Lundberg, President of the Sea Farers International Union.

6. During the campaign I mentioned to Mr. Robinson that I needed employment as my political activities has caused some estrangement between me and my union. Mr. Robinson assured me that I would be taken care of. After election I saw him and was given a card to Mr. Maher, of the Personnel Department of the San Francisco Health Department. Mr. Maher agreed to place four of my group in his department. He also offered me a job in the Public Utilities Department. I rejected this job because I had an opportunity to go to sea.

7. Starting about October 31, 1947, approximately five days before the Mayoralty Election of November 4, 1947, the Tenney Committee started its hearing in Oakland, and a fair and careful examination of the transcript of this hearing, read

in the light of what had preceded it, could lead to no other conclusion than that the Committee was again being used as a political weapon.

I believe that this chain of events speaks for itself, and that they throw a revealing light on the political manipulation of the Tenney Committee, now asking a senate appropriation of $100,000.00.

Later, during the Congressional campaign of 1948, Mr. Havenner's stand on Marshall Aid, his repudiation of Independent Progressive Party Support, the expunging from the records of the smear made against him by the Dies Un-American Committee, caused me to re-examine his political views. I saw then that I had done him and other liberals an injustice, and my subsequent actions in the final campaign were made in atonement.

EXHIBIT "C"

Legislative Department
State of California

SUBPENA

Before the Senate Committee on Un-American Activities of the State of California

The People of the State of California Send Greetings to;

William Patrick Brandhove

You and each of you, are hereby commanded to appear before the Senate Committee on Unameri-

can Activities, Room 415, State Capitol, Sacramento, of The State of California, created by Senate Resolution No. 75, 1947 Regular legislative session, at Room 415, in the State Capitol, Sacramento, California, at 3 o'clock P.M., on Saturday, the 29th of January, 1949, as witness in an investigation by the said committee, and you are hereby commanded to bring with you the following now in your possession or under your control, to wit;

For failure so to attend you shall be liable to punishment as prescribed by law and the practice of legislative bodies.

By order of the Chairman of the said committee, this 28th day of January, 1949.

JACK B. TENNEY,
Chairman.

EXHIBIT "D"

Western Union
(Wire)

Sacramento, California
January 28, 1949.

Hon. Edmund G. Brown
District Attorney
County of San Francisco
550 Montgomery St.
San Francisco, California

William P. Brandhove Today Circulated a Signed Mimeographed Statement to Members of the Legislature Charging that the California Senate Com-

mittee on Un-American Activities Used Him "as an Instrument to Smear Congressman Frank R. Havenner as a Red When He Was a Candidate for Mayor of San Francisco in 1947." Brandhove's Sworn Affidavit in the City and County of San Francisco Under Date of December Nine, 1946 is Reproduced in the Committee's 1947 Report at Page 161, the Original of Which is in the Committee Files. Either Brandhove Told the Truth in This Affidavit or He Lied. On Behalf of the Senate Committee We Urge You to Either Immediately Charge Brandhove With Perjury or to Take the Matter Before the San Francisco Grand Jury. We Are Quite Certain That You Will Take the Necessary and Proper Steps in This Matter. Best Regards.

SENATOR JACK B. TENNEY,
Chairman.

SENATOR HUGH M. BURNS,
Vice-Chairman.

Senate Fact-Finding Committee On Un-American Activities in California.

Charge Senate Account, J. A. Beek, Secretary of the Senate.

EXHIBIT "E"

Western Union

(Wire)

Sacramento, California
January 28, 1949.

Hon. J. Frank Coakley
District Attorney
Alameda County
Oakland, California

William P. Brandhove Today Circulated a Signed Mimeographed Statement to Members of the Legislature Charging that the California Senate Committee on Un-Amercian Activities Used Him "as an Instrument to Smear Congressman Frank R. Havenner as a Red When He Was a Candidate for Mayor of San Francisco in 1947." Brandhove Testified Before the Senate Committee in Oakland On or About November 4, 1947. Either He Told the Truth or He Lied. On Behalf of the Senate Committee We Urge You to Charge Brandhove With Perjury or Have the Entire Matter Presented to the Alameda Grand Jury. We Are Quite Certain That You Will Be As Desirous of Vigorous Action in This Case as Are the Members of the Committee. Best Regards.

SENATOR JACK B. TENNEY,
Chairman.
SENATOR HUGH M. BURNS,
Vice-Chairman.
Senate Fact-Finding Committee On Un-American Activities in California.

Charge Senate Account, J. A. Beek, Secretary of the Senate.

EXHIBIT "F"

Senate of the State of California Before the California Senate Fact Finding Committee on Un-American Activities.

Proceedings had and testimony taken before the California State Senate Fact Finding Committee on Un-American Activities in Open Meeting at the State of California Capitol Building, Room 415, Sacramento California, on Saturday, the twenty-ninth day of January, 1949.

Present:

Hon. Jack B. Tenney, Los Angeles, Chairman
Hon. Hugh M. Burns, Fresno, Vice-Chairman.
Hon. Nelson S. Dilworth, Riverside.
Hon. Fred H. Kraft, San Diego
Hon. Louis G. Sutton, Colusa
Hon. Clyde A. Watson, Orange.
Members of the State Senate Fact Finding Committee on Un-American Activities.

Appearances;

Francis J. O'Shea, Assistant Attorney General of the State of California, Counsel for the Committee.

Angus Morrison, Esq., Legislative Counsel of the California State Legislature.

Mr. Murray Straves, Executive Secretary of the Committee

Mrs. Linnie Tenney, Secretary of the Committee
Martin A. Jarvis, Esq.,
1002 De Young Building,
San Francisco, California

Appearing on behalf of William Patrick Maher Brandhove

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Proceedings

Chairman Tenney: For the purposes of the record, the Senate Committee on Un-American Activities is seated today and has present: Senator Hugh M. Burns of Fresno, Vice-Chairman; Senator Nelson S. Dilworth, of Riverside; Senator Louis G. Sutton of Colusa; and the Chairman, Jack B. Tenney, of Los Angeles.

Also sitting with us is J. Francis O'Shea, Assistant Attorney General of the State of California, and Mr. Angus Morrison of the Legislative Council's Bureau.

I beg your pardon, Senator. Senator Fred H.

Kraft of San Diego should be included among the members of the Committee.

Also we have Mr. Murray Stravers, Executive Secretary of the Committee and Mrs. Linnie Tenney, Secretary of the Committee.

Now, Mr. Brandhove, will you come forward and be sworn?

WILLIAM PATRICK MAHER BRANDHOVE called as a witness being first duly sworn, was examined and testified as follows:

Examination

By Chairman Tenney:

Q. State your full name, please.

A. William Patrick Maher Brandhove.

Q. Where do you reside, Mr. Brandhove?

A. 2418 Forty-fifth Avenue, San Francisco, California.

Q. What is your occupation?

A. Mariner, merchant mariner.

Q. Where did you reside in 1946, in December?

A. Mr. Tenney, I am represented here with counsel, Mr. Martin Jarvis of San Francisco, and I would like to act under his advice.

Q. You wish to confer with Mr. Jarvis?

Mr. Jarvis: May it please the Committee and Mr. Chairman, we object, at this time, to any further questions being propounded by this Committee to this witness on the ground that the purpose of such questions has not been disclosed to Mr. Brandhove

and the same are not for legislative purposes, not in the aid of legislative purposes or for the aid of the Legislature, and as foundation for such objection——

Chairman Tenney: One second, if I may, Mr. Jarvis. You are practicing law where?

Mr. Jarvis: San Francisco, Mr. Chairman, 1002 De Young Building.

Chairman Tenney: Are you associated with anyone?

Mr. Jarvis: No, I am not.

In that regard, Mr. Chairman, we have certain charges brought against this Committee and a sworn statement of such charges has been made. As a foundation for our objection, we will read the following statement of William Patrick Brandhove. The following statement of Mr. Brandhove constitutes a protest against a renewed appropriation for the California Senate Committee on Un-American Activities (the Tenney Committee)——

Chairman Tenney: Just a second, Mr. Jarvis. The Committee has received a copy of that.

Mr. Jarvis: This is a sworn copy, if the Committee please, and we ask to file it at this time.

Chairman Tenney: You have a sworn copy?

Mr. Jarvis: Yes, Mr. Chairman. May it appear of record that a sworn copy of said statement has been filed with the Committee at this time?

Chairman Tenney: Do you now, Mr. Brandhove, swear under oath, testifying under oath, that you made this copy and signed it and are acquainted with the matters in it?

Mr. Jarvis: In that regard, the statement is a sworn affidavit and speaks for itself, Mr. Chairman.

Our objections are on the following grounds: Objections of William Patrick Brandhove to answering questions before the Tenney Committee, January 29, 1949.

1. We object to answering questions by the Tenney Committee on ground that the purpose of such questions has not been disclosed to Mr. Brandhove and the same are not for a legislative purpose or in aid of legislation.

Chairman Tenney: Just a second, Mr. Jarvis, this has not been signed.

Mr. Jarvis: I am sorry, Mr. Chairman, here is a signed statement. That is a copy we gave you.

Objections of William P. Brandhove to answering questions before the Tenney Committee, January 29, 1949.

1. We object to answering questions by the Tenney Committee on the ground that the purpose of such questions has not been disclosed to Mr. Brandhove and the same are not for a legislative purpose or in aid of legislation.

2. Mr. Brandhove has reason to believe, and offers to prove, that the only reason he has been subpoenaed to appear before this committee is because of charges made by him in a sworn statement entitled, "A Protest Against a Renewed Appropriation for the California Senate Committee on Un-American Activities (the Tenney Committee)", and that questions on such subject are not for a

legislative purpose and are in excess of the jurisdiction of this Committee.

3. We charge that the Tenney Committee has been and is now at this hearing engaged in a political and not a legislative investigation in attempting to acquit itself of the charges made by Mr. Brandhove in his sworn statement on file with this Committee, and in this regard, we demand that a joint committee of the Assembly and Senate be constituted to investigate said charges that this Committee has not and is not now acting for a proper legislative purpose.

4. We charge that the Tenney Committee cannot, under elementary principles of law, act as judge and accused; that the Tenney Committee is not and cannot be a fair and impartial tribunal for the purpose of investigating its own non-legislative functions and that a joint committee of the Assembly and Senate, excluding the members of the Tenney Committee is the only proper body to investigate such charges.

5. That at no time has Mr. Brandhove refused to testify before the Tenney Committee and that the Committee itself, including its chief counsel, Mr. R. E. Coombs, has vouched for his veracity by their releases and reports in the past.

6. That the Tenney Committee's good faith is performing a legislative function is open to serious public question as evidenced by the charges of Mr. Brandhove, and of Assembly Concurrent Resolution No. 6 introduced by Messrs. Elliot, Hawkins, Con-

don and Lewis in the Legislature, to which reference is hereby made and a copy of same filed with this Committee and incorporated herein, in that prior to questioning Mr. Brandhove an investigation of un-American activities of the Tenney Committee must first be had to establish or refute such charges.

Chairman Tenney: Those objections are overruled, Mr. Jarvis.

Mr. Jarvis: I instruct the witness, Mr. Chairman, not to answer any further questions on those grounds.

Chairman Tenney: Those grounds are overruled and the objections are overruled and the witness will be directed to answer the questions.

Q. Mr. Brandhove, where were you residing in December, 1949?

A. I refuse to answer on advice of counsel.

Q. Is it going to be your conduct that you are not going to answer any questions presented to you by the Committee?.

A. On advice of Counscl, I will not, no, sir.

Chairman Tenney: What is the feeling of the Committee?

Senator Dilworth: I feel the witness is in contempt of the Committee and the proper method of dealing with this matter is in the courts.

Chairman Tenney: I will call on Mr. O'Shea of the Attorney General's office.

Mr. O'Shea: It is my opinion, Mr. Chairman, that just as a matter of law, without taking into consideration any of the merits or demerits of the case,

that all of the specific questions which the Committee desires to ask the witness should be propounded to him, and if he desires to answer some of them he may do so, and if he refuses to answer others by reason of a refusal to answer any question, he should be given that opportunity.

Chairman Tenney: Mr. Morrison?

Mr. Morrison: I would suggest rather than taking up the time of the Committee and time of counsel and all parties concerned by going through numerous questions that he be asked, and if he refused to answer, he then be asked if he intends to refuse to answer all other questions. I think when his conduct clearly establishes that he has no intention and will not answer any questions propounded to him, no matter what it may be, on grounds stated, that it then becomes a matter of law and can be tested in the courts. I don't think it is necessary to go through each question.

Mr. O'Shea: I don't think all of them, but at least a dozen questions. He has only been asked, so far where he resides. I think fifteen or twenty pertinent questions should be asked of him.

Chairman Tenney: I believe it would be a good idea for Mr. Morrison to read for Mr. Brandhove and his counsel the law on the subject.

Mr. Morrison: I will read first Section 9410 of the Government Code, which states:

"A person sworn and examined before the Senate or Assembly or any committee cannot be held to answer criminally or be subject to any penalty or

forfeiture for any fact or act touching that which he is required to testify. Any statement made or paper produced by such witness is not competent in evidence in any criminal proceedings against the witness. The witness cannot refuse to testify to any fact or to produce any paper upon which he is examined for the reason that his testimony or the production of the paper may tend to disgrace him or render him infamous. Nothing in this section exempts any witness from prosecution or punishment for perjury committeed by him on examination."

Section 9112 of the Same Government Code provides:

"Every person who being summoned to attend as a witness before the Senate, Assembly or any committee refuses or neglects without lawful excuse to attend pursuant to such summons, and every person who being present before the Senate, Assembly or a Committee, wilfully refused to be sworn, to answer any material and proper question, or to produce upon reasonable notice any material and proper books is guilty of a misdemeanor."

Mr. Jarvis: In that regard, may I read the Supreme ruling of the land on the subject?

Chairman Tenney: That is a matter for the Court, Mr. Jarvis. I don't think we will go into that here.

Mr. Jarvis: I would like to cite the case of Jones vs. Security Corporation——

Chairman Tenney: Mr. Sergeant-at-Arms, will you help the attorney, please?

We will proceed with the questions, and you may either answer them or not and the Committee will direct you to so answer the questions.

Q. Were you employed by the United States Army Transport Service as Chief Steward at any time?

A. I refuse to answer on advice of counsel.

Q. Were you living at 1831 Twenty-first Avenue in the City of San Francisco in December of 1946?

A. I refuse to answer upon the advice of counsel.

Q. Your objections here, Mr. Brandhove, are based on the grounds your counsel has propounded to the Committee? A. Yes, sir.

Q. And that is going to be the grounds, on which you object to answering every question?

A. I refuse to answer on advice of counsel.

Q. Will you refuse to answer every question that is propounded to you here today, Mr. Brandhove?

Mr. Jarvis: Mr. Chairman, in that regard, the objections have been written out and a copy has been presented to the Committee, and the objections are to answering any question based upon the grounds stated in those written objections on file with the Committee.

Q. (By Chairman Tenney): Now, Mr. Brandhove, will you state your objections so that we will have them in the record, please?

A. I object to answering questions by the Tenney Committee on the ground that the purpose of

such questions has not been disclosed to me and the same are not for a legislative purpose or in aid of legislation.

2. Mr. Brandhove has reason to believe, and offers to prove, that the only reason he has been subpoenaed to appear before this Committee——

Q. I want your objections in your own words, Mr. Brandhove, first person; I do not care what your attorney says.

A. I have reason to believe, and offer to prove, that the only reason I have been subpoenaed to appear before this Committee is because of charges made by me in a sworn statement entitled, "A Protest Against a Renewed Appropriation for the California Senate Committee on Un-American Activities (the Tenney Committee)" and that questions on such subjects are not for a legislative purpose and are in excess of the jurisdiction of this Committee.

3. I charge that the Tenney Committee has been and is now at this hearing engaged in a political and not a legislative investigation in attempting to acquit itself of the charges made by me in my sworn statement on file with this Committee, and in this regard, I demand that a joint Committee of the Assembly and Senate be constituted to investigate said charges that this Committee has not and is not now acting for a proper legislative purpose.

Q. What we are asking for, Mr. Brandhove, are your objections and the grounds upon which you

make those objections to answering questions propounded to you by this Committee.

A. Those are a part of my objections.

Q. Let's have the objections and not your demands.

A. I charge that the Tenney Committee cannot, under elementary principles of law, act as judge and accused; that the Tenney Committee is not and cannot be a fair and impartial tribunal for the purpose of investigating its own non-legislative functions, and that a joint committee of the Assembly and Senate, excluding the members of the Tenney Committee, is the only proper body to investigate such charges.

Q. Again, I want your objections and not your charges.

A. That is a part of my objection, Senator, and I really believe I have my right to read them. You asked me for them.

Q. Go ahead.

A. 5. That at no time have I refused to testify before the Tenney Committee and that the Committee itself, including its chief counsel, Mr. R. B. Coombs, has vouched for my veracity by their releases and reports in the past.

6. That the Tenney Committee's good faith in performing a legislative function is open to serious public question as evidenced by the charges of myself and of Assembly Concurrent Resolution No. 6 introduced by Messrs. Elliot, Hawkins, Condon and Lewis in the Legislature, to which reference is

hereby made and a copy of same filed with this Committee and incorporated herein, in that prior to questioning Mr. Brandhove an investigation of un-American activities of the Tenney Committee must first be had to establish or refute such charges.

Q. Now, do you refuse to answer any questions that will be propounded?

Mr. Jarvis: I would like first to offer Assembly Resolution No. 6, Mr. Chairman.

Chairman Tenney: I think we are familiar with it.

Mr. Jarvis: May it appear of record that the same has been filed as a part of the record?

Chairman Tenney: We are familiar with it and the fact it was offered by a functionary of the Communist Party by the name of Hall in Los Angeles and Assemblyman Elliot.

Q. Do you now and will you continue to refuse to answer each and every question which may be asked of you at this hearing on those grounds?

A. I refuse to answer any and all questions on advice of counsel.

Q. Do you know Mr. Frank McCormick?

A. I refuse to answer on advice of counsel.

Q. Are you acquainted with Harry Bridges?

A. I refuse to answer on advice of counsel.

Q. Are you acquainted with Louis Goldblat?

A. I refuse to answer on advice of counsel.

Q. Do you know David Jenkins?

A. I refuse to answer on advice of counsel.

Q. Are you acquainted with John Wiley?
A. I refuse to answer on advice of counsel.
Q. Are you acquainted with Oleta O'Connor Yates?
A. I refuse to answer on advice of counsel.
Q. Do you know Paul Schnur?
A. I refuse to answer on advice of counsel.
Q. Do you know Sestolv Ward?
A. I refuse to answer on advice of counsel.
Q. Do you know Dick Linden?
A. I refuse to answer on advice of counsel.
Q. Do you know David Hedley?
A. I refuse to answer on advice of counsel.
Q. Do you know Revels Clayton?
A. I refuse to answer on advice of counsel.
Q. Do you know Mr. Mervyn Rathborne?
A. I refuse to answer on advice of counsel.
Q. Do you know Mr. Walter Stack?
A. I refuse to answer on advice of counsel.
Q. Do you know Blacky Quadros?
A. I refuse to answer on advice of counsel.
Q. Do you know Molly K. Spolmack?
A. I refuse to answer on advice of counsel.
Q. Do you know Elaine Sexton?
A. I refuse to answer on advice of counsel.
Q. Do you know Mary Lake?
A. I refuse to answer on advice of counsel.
Q. Do you know Mr. R. E. Combs?
A. I refuse to answer on advice of counsel.
Q. Do you know Hugh Bryson?

A. I refuse to answer on advice of counsel.

Q. Do you know Nathan Jacobsen?

A. I refuse to answer on advice of counsel.

Q. Do you know Irving Dvorin?

A. I refuse to answer on advice of counsel.

Q. Do you know Scotty Sneddon?

A. I refuse to answer on advice of counsel.

Q. Do you know Joseph Harris?

A. I refuse to answer on advice of counsel.

Q. Do you know James Kiernan?

A. I refuse to answer on advice of counsel.

Q. Do you know Frank Havenner?

A. I refuse to answer on advice of counsel.

Q. Calling your attention to February of 1945, did you discuss affiliation with the Communist Party with anyone?

A. I refuse to answer on advice of counsel.

Q. In February of 1945, did two men by the name of McCormick and Bryson agree to recommend you to membership in the Communist Party?

A. I refuse to answer on advice of counsel.

Q. Were you invited to a dinner by Frank McCormick at the home of Henry Fisher in San Francisco?

A. I refuse to answer on advice of counsel.

Q. Did you attend a dinner in San Francisco on or about February 1945 at which time was present Richard Gladstein, Walter Stack, Mrs. Stack and Mrs. Gladstein and Frank McCormick?

A. I refuse to answer on advice of counsel.

Q. Have you ever beer, Mr. Brandhove, a member of the Communist Party?

A. I refuse to answer on advice of counsel.

Q. Are you now a member of the Communist Party, Hr. Brandhove?

A. I refuse to answer on advice of counsel.

Mr. Jarvis: Mr. Chairman, we have some more signed copies of the objections.

Chairman Tenney: We would be glad to have them.

Q. Referring to the affidavit that your counsel has presented to the Committee, is that your signature, William Patrick Brandhove?

A. I refuse to answer on advice of counsel.

Mr. Jarvis: In that regard, Mr. Chairman, the signature is before a Notary and the fact that the Notary is a Notary is a matter for judicial recognition.

Chairman Tenney: Is that your signature, William P. Brandhove?

Q. Did you take this affidavit before a Notary and have it notarized? A. Yes, I did.

Q. And that was on the twenty-ninth of January, 1949? A. This morning.

Q. Did you sign the affidavit in the presence of the Notary? A. Yes, I did, in his office.

Q. That is Mr. R. M. Stillane?

A. Yes, sir.

Q. Are you acquainted with Assemblyman George Collins?

A. I refuse to answer on advice of counsel.

Q. Were you a guest of Mr. Collins in the Assembly yesterday?

A. I refuse to answer on advice of counsel.

Q. Were you with Mr. Collins in the Assembly today?

A. I refuse to answer on advice of counsel.

Q. Are you a friend of William Snyderland, the secretary of the Communist Party in California?

A. I refuse to answer on advice of counsel.

Vice Chairman Burns: Mr. Chairman, and members of the Committee, I move that the Committee hold the witness in contempt of this committee on this date, and that counsel be instructed to prepare the necessary complaint and have it filed against him in the proper court of Sacramento.

Senator Dilworth: I second the motion.

Chairman Tenney: The motion is that counsel for the Committee be instructed to prepare the necessary complaints and follow the necessary procedure to bring this witness before the courts in Sacramento for contempt of this Committee. Who seconded the motion?

Senator Dilworth: I did.

Chairman Tenney: Seconded by Senator Dilworth. All in favor will signify by saying "Aye." Contrary minded?

(This motion was carried unanimously.)

Chairman Tenney: For the record, it should be stated that attention is called to the affidavit of William Patrick Brandhove of December 9, 1946, which appears in the Committee's 1947 report, and

of which the original copy is in the files of the Committee, subscribed and sworn to on the ninth day of December, 1946, before Ella Cook Kelly, a Notary Public in the City of San Francisco, in which affidavit, among other things, Mr. Brandhove admits being a former member of the Communist Party and specifically that he was induced to become a member of the Communist Party by Frank McCormick and Hugh Brysen in San Francisco; that after joining the Communist Party he carried out Communist activities and so forth.

He appeared before this present Committee in Oakland on November 4—the Committee sat there beginning November 3, 4, 5 and 6, instead of the thirty-first of August as alleged in the affidavit now filed with the Committee by Mr. Brandhove—and he testified on the fourth.

He testified rather fully in reference to a number of matters, and at that time Mr. Gladstein, the attorney for the Communist Party, did present to this Committee an affidavit made by Mr. Brandhove to the effect that the testimony given by Mr. Brandhove on other occasions was false and Brandhove testified he had been offered $5,000 to make that particular affidavit.

The testimony is rather voluminous and it is here before the Committee.

Mr. Brandhove has a criminal record; He was charged with sodomy in Jersey City on October 27, 1930; on October 3, 1935, grand theft; and went to Preston School of Industry; May 5, 1940, in Ork-

land, sentenced to $25.00 or five days for a violation of the California Motor Vehicle Code; April 7, 1942, wanted for grand theft and burglary in San Jose, California; March 17, 1946, San Francisco, malicious mischief at 1255 Kearney Street, San Francisco; November 26, 1946, San Francisco, violation of the Penal Code for defrauding an innkeeper; a felony warrant for his arrest charging grand theft, Section 503 of the Vehicle Code, was canceled in Los Angeles because the victim could not be located on March 3, 1947.

An affidavit allegedly signed by William Patrick Brandhove on October 24, 1948, and distributed in the City of San Francisco, is also before the Committee, containing certain allegations.

Mr. Brandhove made certain other affidavits in behalf of or for Congressman Frank Havenner, which were introduced in the Congressional Record of January 17 of this year.

Senator Dilworth: Introduced by Whom?

Chairman Tenney: Introduced by Frank Havenner, the Congressman himself.

The San Francisco News carried that story and a part of the allegation in that particular story referred to William Mailliard and Don Nicholsen of San Francisco, and Mr. Nicholsen made a statement to the press which was published in the San Francisco News of January 17, 1949, which reads as follows:

"Don Nicholsen, William Mailliard's hired cam-

paign manager, said today he would 'welcome a congressional investigation as demanded by Mr. Havenner. Mr. Havenner has twice been re-elected through trick and device on the part of his supporters, and an opportunity to demonstrate that would be appreciated. The Brandhove affidavit is a tissue of lies and can be so proven.' "

Mr. Brandhove, I would like to have you answer one additional question. Just stand up, please. It won't be necessary for you to come up here.

Q. Are you acquainted with Congressman Franck Havenner's secretary?

A. I refuse to answer on the advice of counsel.

Q. On the grounds heretofore mentioned?

A. That is correct.

Q. One other question, Mr. Brandhove. Does the Army Transport Service in San Francisco have a record of your activities?

A. I refuse to answer on the advice of counsel.

Chairman Tenney: Very well; that is all.

Now, I wonder if the Mayor of the City of San Francisco, Mr. Elmer Robinson, is present?

Mayor Robinson: I am present and I would like to make a statement. I would like to make a statement first before being sworn and then if the Committee would like me sworn I am perfectly willing to be sworn.

Yesterday there was called to my attention a document that had been circulated among some of the legislators here in the State Capitol at Sacramento. I communicated with the chairman of this Commit-

tee, Senator Tenney. He talked with me on the telephone, and he acquainted me generally with the context of the pamphlet, and I expressed my desire to be here present today to challenge the statements set forth in that statement.

I ordinarily would refrain from dignifying such statements as are contained in the document, but when any man sees fit to come before a Committee of the State Senate and present such a document to which he has affixed his signature and state that he has sworn to it before a Notary Public, I desire the opportunity to testify at whatever time this Committee may determine with reference to all of the matters and things therein contained, wherein reference may be made to me either directly or indirectly.

The document contains inferences and innuendoes that are premised entirely on falsehoods, untruths, part truths and pure fiction.

I ask of this Committee the opportunity to be present and be sworn as a witness to testify completely with reference to all mention of me in that document.

Now, if the Committee desires it today I am prepared to be sworn today. If it is the wish of the Committee to defer hearing my testimony until such time as the witness Brandhove has been examined, I shall abide your wishes in that regard, of course.

Chairman Tenney: Will you be seated, Mayor Robinson? I would like to say this to the Committee: We now have this declaration by Mr. Brandhove under oath which is before the Com-

mittee and it no longer has the status it had yesterday when it was distributed to the members of the Legislature. I believe what Mayor Robinson says is true, I did speak to him yesterday on the telephone and acquainted him with the charges that are made in this document and told him I thought perhaps it would be well to have these things cleared up immediately, and in view of the fact, however, that Mr. Brandhove has refused to substantiate any of these things under oath before the Committee, it may be the status of the entire situation is changed.

What is the feeling of the Committee? Do you think we should take Mr. Robinson now or at a later date? I believe there will be nothing lost taking his testimony today.

Mayor Robinson: The facts will be the facts at any time you see fit to hear my testimony.

Chairman Tenney: I believe, Members of the Committee, and Mayor Robinson, as long as you have taken the trouble to be here today voluntarily and to give such testimony as the Committee requires, it would be best to proceed to examine you in reference to the matters to this document. If the Committee has no objection, we will do that.

Mr. Jarvis: Mr. Chairman, we object on the ground that the Committee has no jurisdiction to take this testimony.

Chairman Tenney: You have no right to object, Mr. Jarvis. You are representing Mr. Brandhove. You are not representing Mayor Robinson.

Mr. Jarvis: May I make my objection on the record?

Chairman Tenney: You may not.

Mr. Jarvis: On the ground it is for purposes of political activities rather than legislative purposes?

Chairman Tenney: You are not representing Mr. Robinson, to the best of my knowledge—Is he, Mr. Robinson?

Mayor Robinson: He certainly is not. I might point out to you that this gentleman has already participated in the hearing by offering evidence, and I feel, as a citizen, I am entitled to the right to refute that evidence at any time this Committee is willing to hear me. The hearing is on; this man has submitted evidence, he calls it evidence, and offers it in the record, and I demand the right to refute the statements contained in that document.

Chairman Tenney: We will go into that immediately, Mayor Robinson. However, I think before we do that I wonder if Mr. Jarvis would come forward and be sworn.

Senator Dilworth: Will you swear Mr. Jarvis?

MARVIN A. JARVIS

called as a witness, being first duly sworn, was examined and testified:

Examination

By Chairman Tenney:

Q. State your full name, for the record.

A. Marvin A. Jarvis.

Q. Where do you reside?

A. 500 Hyde Street, San Francisco.

Q. Where is your law office?

A. 1002 De Young Building, San Francisco.

Q. You are there alone? A. I am, sir.

Q. When were you admitted to the Bar in the State of California? A. 1947.

Q. Now, did Mr. Brandhove employ you for the purpose of representing him here in Sacramento?

A. He did.

Q. Is Mr. Brandhove paying you a fee for that matter? A. He will, yes.

Q. Have you had any retainer from him?

A. No.

Q. Are you acquainted with Mr. Franck Havenner? A. I am.

Q. How long have you known Mr. Havenner?

A. Since the Congressional elections.

Q. Of last year? A. Of last year.

Q. Where did you take your law studies?

A. Stanford University.

Q. Are you acquainted with Mr. Richard Gladstein? A. Professionally, yes.

Q. Mr. Aubrey Grossman? A. No.

Q. Professionally? A. No.

Q. Do you know who he is? A. No.

Q. Do you know Mr. Jenkins of the California Labor School? A. No.

Q. You have never met him? A. No, sir.

Q. Are you acquainted with Mr. Havenner's secretary? A. I am not.

Q. You have never met her? A. No, sir.

Q. When did you last talk to Mr. Havenner?

A. At a political meeting, three or four days before the election for Congress of last year.

Q. When did you last talk to him on the telephone? A. I never have.

Q. Are you acquainted with Mr. Elliot, an Assemblyman? A. I just met the gentleman.

Q. Are you acquainted with Mr. George Collins?

A. I am, professionally.

Q. How long have you known him?

A. Approximately two and a half years, casually. He represented a defendant in a case where I represented the plaintiff—Pardon me, it was just the other way around, he represented the plaintiff in a case where I represented the defendant.

Chairman Tenney: I think that is all, Mr. Jarvis.

Senator Dilworth: Will you swear Mayor Robinson?

ELMER ROBINSON

called as a witness, being first duly sworn, was examined and testified as follows:

Examination

By Chairman Tenney:

Q. Now, Mr. Mayor, would you be kind enough to give your name for the record?

A. Elmer Robinson; I live at 2100 Pacific Avenue, San Francisco, California.

Q. You are presently the Mayor of the City and County of San Francisco? A. I am.

Q. When were you elected to that office?

A. The November election of 1947.

Q. Do you recall, Mr. Mayor, the date of that election? A. November fourth, as I recall.

Q. I mention that because Mr. Brandhove's sworn affidavit alleges that the Committee on Un-American Activities started its hearings on October 31, 1947, approximately five days before the mayoralty election of November 4, 1947, in Oakland. The record shows, as a matter of public record, the Committee opened the hearings in Oakland on the third of November, and Mr. Brandhove testified on the fourth, which more or less makes Mr. Brandhove a liar by his own testimony on the public record.

Q. Have you ever met Mr. Brandhove?

A. A number of times.

Q. Can you tell us approximately the first time you met Mr. Brandhove?

A. Well, like most candidates for public office, I had to file within the time provided by law. I believe the last day for filing was sometime in September of 1947, the exact date I do not have in mind because I filed at 9:00 o'clock on the morning of the first day and started campaigning actively by visiting meetings from that time forward until election day. There were a great number of candidates who filed for public office in San Francisco at that election and among them was a man named—who gave his name as William Patrick Brandhove, a candidate for supervisor. There were four candidates for the office of mayor and there

were quite a number for the office of supervisor, I have forgotten just how *man,* because I was more concerned with the number running for the office of Mayor.

Now, I had better answer your question, Mr. Senator, like all candidates I covered every possible meeting, I spoke at breakfasts, luncheons, dinners and I went through department stores, spoke at factories, and every place where two or more people would stand still and listen I talked for Robinson for mayor and I covered all night meetings I could get a list of.

The candidates for mayor, there were three major candidates, one fellow who had somewhat less strength, but the three main candidates maintained headquarters, had staffs working for us, and, naturally, had a list of all meetings in San Francisco and, as a matter of fact, our offices even exchanged lists of meetings, and supervisors, having less staffs, would very often call our headquarters and ask for the various lists of meetings which were given to us each morning for the day and each night for the night, and I covered all I possibly could, sometimes as many as ten or eleven in one night and some nights only two, three or four, depending on how many gatherings there were made available to us, and, sometime, I would say, during the middle of September, now, this is an estimate, because I wasn't thinking of my own campaign—but my

recollection would be about the middle of September, maybe a week, more or less, one way or the other, one night there were three cars, maybe four fellows to the car, riding in my particular caravan, the other candidates had about the same, and I am riding along the street and we had occasion to stop and wait for some reason, I have forgotten what it was, and we heard a loud speaker blasting to beat the band a block away, and, figuring that it might be one of my opponents, I became concerned, and I caused an investigation to be made.

We went on our way but didn't catch up with the loud speaker that night.

On the next night we went to some meeting in the far Mission—the Mission District in San Francisco and the loud speaker came blandly up to the meeting and here was a car with a loud speaker attachment on it, and lo and behold, it had pasted on its two sides large signs, "Brandhove for Supervisor" and then underneath that held with some little bumper straps were the signs, "Robinson for Mayor."

I became concerned and asked one of my boys to investigate and I don't recall for the moment who it was investigated, but I have a general idea, anyway, he reported back to me that this man was a candidate for supervisor and I said that I did not like the idea because I did not want to be involved in any supervisor's fight. Every night I had been meeting various candidates, the more

prominent ones, of course, more often because they were attending more meetings, and we would say "Hello" and might get well acquainted in six weeks time of campaigning, covering the same meetings you meet all the candidates and eventually I met Mr. Brandhove, whether I met him on the first night we identified the loud speaker or at a subsequent night, I cannot say.

Q. May I interrupt, were you running independently?

A. Yes, I was running independently as were the other candidates. There were no tickets in the campaign at all. As you know, the office is nonpartisan. We had no package, and were all running on our own, even the supervisors—although I think three supervisors were running together, but generally there were no tickets.

Senator Kraft: May I ask a question?

Chairman Tenney: Is it relevant to what he is talking about now?

Senator Kraft: No, I will skip it.

Chairman Tenney: Just hold it for a moment.

A. (Continuing): As I met all the candidates, I met Mr. Brandhove. I observe, in connection with Mr. Brandhove's statement, that he met me; of course he met me, he couldn't help but meet me, because all the major candidates for the office of mayor at all meetings were asked to speak first because there were a greater number of candidates for supervisor. Then were called the incumbent

supervisors and on down the line would be the fellows who developed to be almost or also rans.

I never tarried very long at these meetings, after I made my talk I was off to the next one, and in spite of what Mr. Brandhove says in his statement I never heard him make a speech. One night I did walk into a place when he was just completing his speech, and he was walking out as I walked in, and that is the nearest I ever came to hearing Mr. Brandhove make any speech.

Chairman Tenney: All of this was between the dates of what?

A. I would say the middle of September and fourth of November.

Q. Now, did Mr. Brandhove at any time, or did you say to Mr. Brandhove at any time that he should not be seen talking with you or that you should be not seen speaking together?

A. No, that is absolutely untrue, false and untrue.

Q. Did you ever suggest to Mr. Brandhove that you meet with him privately?

A. No, I did not.

Q. Was there ever any conversation at all that could remotely be connected with such a suggestion on your part?

A. No, quite the contrary. There were two things that would account for that; one is I did not want to be associated with any candidate for supervisor because I was seeking the support of all the

people, and I did not want to be tied with any other candidate for supervisor, and, likewise, the other candidates were in the same position, they were remaining aloof from candidates for supervisor.

In addition to that, the only time Mr. Brandhove ever spoke to me, and he did approach me at different times and expressed himself in the presence of a number of people, that he was broke, that he didn't know whether he was going to be able to continue his campaign and he very patently hinted a few times that a couple of dollars would help him along and, later, I will point out a time when he very directly asked me for some money, and that is in paragraph 2 and just right along with the subject I am discussing.

Q. Let us take it along gradually, if you will.

A. Yes.

Q. Incidentally, did you ever have a conversation with me, the chairman of this committee, at any time during your campaign for the office of Mayor of the City of San Francisco?

A. Never a word. If I had seen you I would have talked to you, but I didn't see you.

Q. That is right. Did you talk to any of these senators, members of this Committee, in reference to your candidacy? A. Not a one.

Q. Was there ever any understanding between you and myself or the members of this Committee that we were to assist your campaign by smearing any other candidate?

A. There was never any conversation at all. I never met up with any one of you at that time. You were pretty scarce, I don't know why, but you were not around San Francisco, and I was busy.

Q. We had other campaigns, Mr. Mayor.

Now, Mr. Brandhove makes this statement, first he says:

"Mr. Robinson suggested that we meet privately." You have categorically denied that, and then he says, "This we did on several occasions, one of them being at Lake Merced, where we both withdrew from a political picnic to walk unseen in a sequestered spot along the lake. Mr. Robinson told me that I was doing good work and urged me to keep up the attacks on Franck Havenner. I then told Mr. Robinson that I had no money for campaign purposes and that my car had broken down."

Will you tell the Committee what the situation is, if any, in that allegation?

A. Mr. Brandhove, on the occasion he did speak in my presence, was telling what he was going to do to the Communists down on the waterfront; how he was going to fight them alone, singlehanded, was going to carry the world, and he had a great number down on the waterfront who were going to follow him, and he was going to do great things.

I caused an investigation to be made among some friends of mine who belong to the various waterfront unions, and I learned that Mr. Brandhove

did not have the following he pretended to have and thereafter I pretty generally discounted that he would say as we would meet from time to time, and I instructed those who traveled with me in my campaign to stay away from him.

I received through the mail, at my home, an invitation to some sort of a railroad man's picnic, I don't recall which particular section of the railroad men it was, but it was to attend a picnic at Lake Merced, and being the candidate, and there being more than two people promising to be present, I went to the picnic and when I got there Mr. Brandhove was there, and one or two other gentlemen, and we waited around for the picnic to start, they had a loud speaker set up, and we waited and waited, and very few people put in an appearance, it was a pretty weak picnic, however, I made my speech over the radio, Mr. Brandhove, it seems, had already made his before I arrived, and, afterwards, Mr. Brandhove said, "I have something very important I want to say to you," and I said, "Well, let's wait until we get through." I wanted to shake hands all around with the people that were there, and we walked around and had a bottle of Coca Cola or a bottle of beer and tried to talk to everyone and get a few votes for Robinson for Mayor, and Brandhove had his cards advertising Brandhove for supervisor and I did go out thirty or forty feet with him, to the edge of the lake, and he told me he had written a book and that the book was

going to straighten out the world, and, as I recall, he gave me a copy of the book and it had a yellow paper on the cover and on the front, as I recall, it sold for a dollar a copy, but it was going to prove that there was a Communist behind every tree and behind every building and Brandhove was the man who was going to dispose of this whole program. I took the book home and that night or the next night I read a little bit of, but it was all Brandhove and his experience as a cook on a boat or something like that, and what labor had done to him, and what the Communists had done to him, and what he could do, I don't think I saved the copy of the book, I think it went in the waste basket, but whatever it was, that was the great thing, and then he said to me——

Q. This is at Lake Merced?

A. Yes. He said to me, "If I could just have some money—" He wanted to open headquarters down on the Embarcadero, and then he was going to divide all the seamen, of course he didn't know and I didn't tell him that I had a number of seamen who were advising me with reference to my campaign, and so I took it all with a grain of salt, that is what he said, but every approach for anything, just a few dollars, he was always crying that he was starving and broke, and I had a committee that handled that for me and I might have mentioned Mr. Warnock Walsh, I might have mentioned that he was the chairman of my finance com-

mittee. I may have told him that I had no money, that Mr. Walsh was the chairman of the finance committee, and that I had no money to give away anyway, I had enough to do to keep going myself.

However, that is the very secret conference that took place at Lake Merced. He wanted some money to print or distribute some more of these books, that was a part of the approach when we were out at the lake when he told me about the book that was going to settle the problems of the world. He needed some money to get out some more books, either to distribute them or to print them, I don't recall.

Q. You told him at that time that you didn't handle the money of the campaign? A. Yes.

Q. But you did refer to Mr. Walsh, who was your finance manager?

A. I told him I had no money, and that if he wanted any money that they were handling the campaign funds, I was not.

Q. Mr. Mayor, are you acquainted with the firm of Monnet and Gordon, in San Francisco?

A. Yes.

Q. Mr. Brandhove alleges in this statement of his, which is now under oath, that Mr. Walsh sent him to Monnet and Gordon, "a novelty supply company, which later was the only firm to be given a concession by the city administration for selling souvenirs at the Portola Festival. They immediately made available for me a 1942 Buick, Mr.

Monnet's personal car. They also paid for its storage, gas and oil."

A. I know nothing of that.

Q. It is generally true in most campaigns, however, that if you are promising candidate many good supporters do get together and donate cars for the use of the candidate?

A. I don't doubt that was done. My campaign was no different than any other, and I hope that my committee did as much as the other committees did, and I imagine that they did because I won the election and the polls, told me before the election that I was to be the successful candidate, and I had that information.

Q. The fourth paragraph alleges:

"Several days later, a member of Elmer Robinson's campaign committee, who had represented me legally, turned over to me $500.00."

A. I have no knowledge of such a thing.

Q. Next is the one:

"On one occasion I mentioned to Mr. Robinson that I would be willing to undertake the organization of waterfront headquarters for him. Mr. Robinson arranged for me to meet with Supervisor Dan Gallagher, who turned against Franck Havenner, when he, Gallagher, was not accepted by the liberal forces as a candidate for mayor. Mr. Gallagher told me that waterfront headquarters were being set up by Harry Lundberg, president of the Sea Farers International Union."

Have you any comment to make on that?

A. Yes, that is not true. Mr. Brandhove didn't have to meet Mr. Dan Gallagher through any recommendation from me for this reason: Mr. Walsh and fifteen other San Francisco citizens, would travel with me every night to every political meeting, and some would go ahead of me and some would remain behind me and give me the results of the meeting as to my speech after I left on what I had said or what I should say when I would get to the next meeting, and I was thoroughly briefed on every meeting, and Mr. Gallagher was one of the group, and if Mr. Brandhove attended the meetings he says he did, then Mr. Brandhove met Mr. Gallagher on his own, if he did meet him. I don't know that he did, and I have never seen them speak together.

Q. His next statement is:

"During the campaign I mentioned to Mr. Robinson that I needed employment as my political activities had caused some estrangement between me and my union." As a matter of fact, he had been expelled.

"Mr. Robinson assured me that I would be taken care of. After election I saw him and was given a card to Mr. Maher, of the Personnel Department of the San Francisco Health Department. Mr. Maher agreed to place four of my group in his department. He also offered me a job in the Public

Utilities Department. I rejected this job because I had an opportunity to go to sea."

Do you have any comment on that?

A. Well, Mr. Brandhove tells an absolute untruth there because there isn't a man, woman or child living who can honestly say that I made them any promise for any position before I was elected to the office of mayor, and you may understand, Mr. Senator, and no doubt you do, not being an amateur yourself, I have been around political life for about thirty years, and one of the elementary things a man learns is that you do not make political promises of patronage in campaigns. If that had been thirty years ago when I was a young boy, there might have been some merit to it, but a man who knows anything about seeking public office knows better, he never does it, and I never did.

Now, Mr. Brandhove did. After I became mayor some months back, he came in with two men and said that they were starving, out of work, and wanted a job. Now, anyone who knows the charter of the City and County well knows I had no jobs to give. I have three jobs only, an executive secretary, a confidential secretary and a stenographer. Beyond that, excepting my commissions and boards, all jobs are Civil Service. I have no control over them, Mr. Senator, and not so much as you have, because you might be able to change the law here, but I have no control over them at all.

We have in the mayor's office the position of

public service director and he has an assistant. When anyone comes in from the street or sent in by acquaintances, whether it be a stranger or one with whom I am acquainted, they are by me or some one in my office referred to the public service director. He, in turn, takes them down to the Civil Service Commission. They, under the law, have the right to give what is known as temporary or ninety day employment if the employment is needed in a department and there is no Civil Service list available.

Now, Mr. Brandhove and these two men who were with him were referred by me to Mr. Sullivan, and Mr. Sullivan probably, if he did what he was supposed to do and would do if any person came in to him, he took them down to the Civil Service Commission and, undoubtedly, tried to get them employment because when starving people come in or people come in and report they are starving, we try to see if they can be helped, and that is the manner and the method of doing it in San Francisco.

Whether they got employment, I don't know.

Q. I believe that about covers it.

A. There is one thing you have not covered, and, then, so far as the volunteer statement is concerned, I believe I am through.

Two things I want to say, one is I don't know Franck Havenner to be a Communist, and the second one that I want to say is I have never said to a man,

woman or child that he is a Communist. I want that in the record.

Now, it is true that Mr. Brandhove did a lot of talking, I did the listening, and the things that are set forth in this statement are what Mr. Brandhove himself might have had in his mind or might even have said, but they are not what Robinson said.

Now, there is one other point that is made in paragraph 3, which, I believe, needs clarification. Mr. Brandhove in his statement says that he went to see the firm of Monnet and Gordon. I don't recall of ever having met Mr. Gordon, but, during the campaign, I went to make one of the Robinson campaign speeches before a group called the Show Folks of America, and a man by the name of Frank Winkleman was president of it, and he told me that they complained they had not been given an opportunity to exist in San Francisco, and I told them, a committee from their group, that if I became mayor of San Francisco I would see they got fair treatment. That was the extent of my statement.

I was elected, and Mr. Monnet became the president of Show Folks of America, and he came to see me with reference to the Portola Festival in San Francisco, and I referred him to the Portola Festival Inc.

Before I became Mayor, my predecessor, Mr. Roger Lapham, pursuant to recommendations by the Board of Supervisors, appointed two commissions, one for the Centennial Observance and the

other for the Portola Festival in San Francisco. My predecessor appointed those two committees.

The Portola Festival Committee, Inc., was one of them and the Centennial Observance was the other.

After I became mayor of San Francisco I called for the two files and examined the personnel of both committees and I determined, as mayor of San Francisco, that I would not add to or strike from the committee appointments of Mayor Lapham, and I did not appoint one man to either the Portola Festival Committee or the Centennial Committee, and neither did I remove anyone, so, when Mr. Monett came to see me about the Portola Festival and reminded me of my promise that the Show Folks of America would be given a fair deal, I referred him to the president of the Portola Festival Committee, Inc., and Mr. Monnet went from me to them and carried on his negotiations.

Mr. Brandhove says in his statement that Mr. Monnet and his group, the Show Folks of America, did get some concession at the Portola Festival, but I had no participation whatever, and whatever they got was direct with the corporation voluntarily and I say that it is very unfair and unjust and an unwarranted implication thrown into this statement with reference to that matter, and it is wholly without foundation or truth.

I think that covers it.

Chairman Tenney: Do the members of the Com-

mittee have anything to ask the Mayor of San Francisco?

Senator Dilworth: Mr. Chairman.

Chairman Tenney: Senator Dilworth.

Senator Dilworth: I would like to say I consider that the Mayor has been most frank and I want to congratulate him on his Americanism, and I think he has given us all the information in his possession.

Chairman Tenney: Are there any other questions?

Mr. Robinson, is there anything you wish to add?

A. Just this one thing, I shall hold myself available to this time or place it might desire to ask me any other questions in connection with this or any other matter.

Chairman Tenney: Thank you very much, and the record will show you appeared voluntarily, and the Committee appreciates your cooperation.

There are a couple of matters, before we adjourn, I think should be inserted in this record. One of the allegations made by Mr. Brandhove in his now sworn to affidavit is that the Committee, the Senate Committee on Un-American Activities, used him as an instrument to smear Congressman Franck R. Havenner as a Red, when he was a candidate for Mayor of San Francisco in 1947, and that the Republican machine in San Francisco and the campaign management of Elmer E. Robinson, Franck

Havenner's opponent, conspired with the Tenney Committee to this end.

Calling the Committee's attention, and for the purpose of the record, to Mr. Brandhove's testimony before the Committee in Oakland in November, we have only been able to find one reference to Congressman Havenner in Mr. Brandhove's testimony, and that is this part which appears at page 127 of the Committee transcript of the testimony at that time, which reads:

"I have proven in a little pamphlet I just published called "Communist Conspiracy on the United States Waterfronts' that since the adoption of the so-called 'democratic constitution' the party of San Francisco, did divert from the treasury of the Marine Cooks and Stewards Union, C.I.O., well over $150,000 in the space of one year.

"Question by Mr. Combs: For what purpose?

"Answer: For purposes of course, of organizing the Communist party and encouraging a lot of political opportunists, such as Gladstein and his law firm. Incidentally, while I'm on that subject, I understand that the law firm of Gladstein, Sawyer, Resner, Andersen and Edises are very powerful today, not only in the affairs of the union, but also in city government. It appears they can even have judges take days off so they wouldn't have to sit in judgment upon them in court. It's amazing the strength they have. They hire people, pay them a thousand dollars, pick money out of thin air—it's really amazing.".

Senator Dilworth: If this testimony has not been previously public I think the witness has pretty well discredited himself and the necessity to read it again is gone.

Chairman Tenney: The purpose of my reading into the record this part of his testimony is to show the only reference made in his testimony to Congressman Havenner. This allegation that he has in the affidavit that the Committee induced him and used him as a tool to smear Congressman Havenner, and this testimony was given on the day of the election, and I want it in the record to show that by his own testimony, either Mr. Brandhove was lying then or he is lying now.

(Continuing): "It's amazing the strength they have. They hire people, pay them a thousand dollars, pick money out of thin air—it's really amazing. Why, last Tuesday they donated a thousand dollars to Havenner."

That is the only reference to Congressman Havenner that we have been able to find in his testimony.

Just one other small part of the testimony that I think should be read into the record, because it shows the inconsistency, and that is the following, with appears at page 229 of the Committee's Oakland hearing, and the Chairman was asking Mr. Brandhove:

"Question by Chairman Tenney: Mr. Brandhove, may I make this suggestion: There were two points Mr. Gladstein made that require your answer. First, he charged that at the time that you

allege in your affidavit and testimony that you attended a Communist Party meeting together with himself and his wife, that first, you have never seen his wife, and secondly, at that time he was in Washington. And the second point, that you made an affidavit in which you accused Harry Lundeberg of furnishing at least part of the funds to the fight you were having against Communist Control of the Union. Now, about when was it you met Mr. and Mrs. Gladstein?.

"Answer: The first time I met Mr. and Mrs. Gladstein was at the home of Henry Fisher during the month of February.

"Question by Mr. Combs: What year?

"Answer: 1945.

"Question: Was that on the occasion of your being recruited into the Communist Party?

"Answer: There were three days before my recruitment into the Communist Party.

"Question: In your affidavit you refer to being driven, I think by Mr. and Mrs. Gladstein, to a particular place where you had a Communist Party meeting. What was the approximate date?

"Answer: I was driven on two occasions, actually, by them. On one occasion it was the St. Francis Hotel, the Italian Room and that evening Mr. Gladstein and Mr. Schneiderman——

"Question: What Schneiderman?

"Answer: William Schneiderman—gave talks that night, and the subject under discussion was the Dumbarton Oaks Conference.

"Question: Can you describe, from your recollection, Mrs. Gladstein?

"Answer: Yes, she was I should say a slight woman, blonde——

"Question: Can you recall her first name?

"Answer: Oh, God, I don't know her first name.

"Question: Was it in their automobile?

"Answer: Oh, yes.

"Question: Do you remember the type of automobile it was?

"Answer: It was a coupe, I recall, I believe a convertible.

"Question: Do you recall the make?

"Answer: No, I didn't pay any attention.

"Question: But it was a coupe?

"Answer: It was, definitely.

"Question: Therefore, it is your testimony that Mr. Gladstein's statement that he was in Washington at a particular time is not the time you referred to?

"Answer: I don't know what he referred to."

Now, we will go to page 232:

"Question: Will you tell us about the making of this affidavit, briefly?

"Answer: Oh, yes, I made it. I made two affidavits.

"Question: Briefly explain the circumstances.

"Answer: I was plagued by numerous telephone calls from Frank McCormick, who was at that time port agent of the Marine Cooks and Stewards Union. I wouldn't accept the calls at the hotel.

Then finally I accepted them, and I told them to call me again that evening. The call was early in the morning, 9:00 o'clock, I would say. I told them to call me at 5:00 o'clock. He did call at 5:00. At that time Frank McCormick told me he wanted to see me. I said what about, and he said he wanted to see me about getting me to withdraw from the rank and file group. I told him I'd think it over and see him the following day. The following day I had lunch with him at Jimmy's Place down near the Embarcadero. It's used quite frequently by the Communist clique, and he said that Gladstein wished to see me about something he had in mind. Well, I had something in mind myself. I went up to see Gladstein anyway, and had a talk with him. At that time Richard Gladstein asked me if I would sign an affidavit prepared by him and guarantee him that I would not run for office for one year, and accept from him payment of $5,000.00, mind you, if I would sign an affidavit prepared by him. I asked him what the content of that would be, and he said it would involve Harry Lundeberg, President of the Seafarers International Union of California. I said, 'How will it involve Lundeberg?' He said, 'I want you to say in that affidavit that moneys were received by your group from Lundeberg.' I told him to prepare the affidavit and I'd be back to sign it the following day. That night, together with two members of the Rank and File Publicity Committee, Kaplan and Martin Harris—

"Question: You realize you are accusing Gladstein of perjury?

"Answer: Oh, yes, I accused him in court of the same thing.

"Question: All right, continue.

"Answer: I went to the Powell Hotel where I dictated to a stenographer, stating that I would, on the following day, sign an affidavit that would be presented to me by Mr. Gladstein; that I wished to take this occasion, twenty-four hours in advance, of being on record; that I was merely signing that affidavit because it was presented to me as a threat of intimidation and coercion and an attempt to buy my will and an attempt to sway me away from my convictions against Communism. I went to Gladstein's office the following day as arranged, and signed the affidavit."

Now, is there anything more to come before the Committee?

Mr. O'Shea, will you handle the matter referred to earlier by the Committee?

Mr. O'Shea: The matter will have to be presented to the City Prosecutor, if that is what the Committee intends to do. As far as I am concerned, it is a question of law now, and whoever is going to swear to it; if you decide you want to swear out a complaint, a member of the Committee will have to sign the complaint.

Chairman Tenney: The procedure in the past—our counsel was not able to be here today because

of an infection of his face, and, for the record, I talked to him yesterday, and he had the infection lanced and had to go to the doctor today and it was impossible for him to get here, but he did say categorically and emphatically and with complete emphasis that Mr. Brandhove was a liar and nothing of any kind ever occurred as stated by Mr. Brandhove, and that he will take the stand at any time under oath for the purpose of refuting the allegation in the document distributed by Mr. Brandhove.

Mr. O'Shea: Might I suggest this: That, as you know, the normal procedure would be for some one on the Committee, if they desire to issue a complaint for a misdemeanor committed within this City, to go to the prosecutor and swear out a complaint. Some member of the committee will have to swear to the complaint.

Chairman Tenney: I will be here until Monday at about 1:00 o'clock and I will sign the complaint myself.

Mr. O'Shea: It will have to be written up and taken to the City Prosecutor and sworn to before the Magistrate.

Chairman Tenney: That will be done.

If there is nothing further the Committee will stand adjourned until the call of the Chairman.

CERTIFICATE OF OFFICIAL PHONOGRAPHIC REPORTER

State of California,
County of Sacramento—ss.

I, J. C. Dunn, hereby certify that I am an official phonographic reporter of the Superior Court of the State of California, in and for the County of Sacramento, and a competent phonographic writer.

That upon Saturday, January 29, 1949, I took down in phonographic writing all the testimony given and proceedings had before the California State Senate Fact Finding Committee on Un-American Activities in Room 415, State Capitol, Sacramento, California; that I thereafter caused my said phonographic writing to be transcribed into longhand typewriting, and that the foregoing 52 pages constitute a full, true and correct transcription of all my said phonographic writing, so taken as aforesaid, and that the foregoing 52 pages constitute a full, true, correct, accurate and verbatim transcript of all said testimony and proceedings.

Dated: Sacramento, California, January 31, 1949.

J. C. DUNN,
Official Phonographic
Reporter.

[Endorsed]: Filed March 21, 1949.

[Title of District Court and Cause.]

MOTION TO DISCUSS COMPLAINT

Now come Jack B. Tenney; the Senate Fact Finding Committee on Un-American Activities, a California legislative committee; Hugh M. Burns; Nelson S. Dilworth; Fred H. Kraft; Louis G. Sutton, and Clyde A. Watson, each for himself and not one for the other, and files this his Motion to Dismiss Complaint of plaintiff in the above-entitled action:

I.

That said complaint does not state facts sufficient to confer upon the above-entitled court jurisdiction of the subject matter of said complaint for the following reasons and in the following particulars:

(1) That the complaint in the above-entitled action does not state facts sufficient to show that Senate Resolution No. 75, June 20, 1947, is invalid under the 14th Amendment of the Constitution of the United States if read into any criminal statute for want of certainty.

(2) That no diversity of citizenship between the parties is disclosed in said complaint.

(3) That said complaint fails to state facts sufficient to disclose any substantial claim for relief arising under the laws of the United States and/or the Constitution thereof.

II.

That the complaint in the above-entitled action

does not state facts sufficient to constitute a claim upon which relief can be granted.

III.

That the complaint in the above-entitled action does not state facts sufficient to constitute a claim upon which damages may be recovered from these defendants or either of them.

IV.

That said complaint is not a short and plain statement of the claim of plaintiff showing that the plaintiff is entitled to relief.

V.

That there is a misjoinder of causes of action in that there are joined together several causes of action in said complaint and not stated separately therein, to wit:

(1) A cause of action relating to a transaction or occurrence wherein it is claimed by plaintiff that he was deprived of certain rights in respect to circulating a petition to the Legislature of the State of California.

(2) A cause of action where it is claimed that plaintiff was deprived of certain rights in respect to being subpoenaed to appear before the Tenney Committee.

(3) A cause of action based upon a claim that plaintiff was deprived of certain rights in respect

to his appearance and the conduct of defendants, Jack B. Tenney, the Senate Fact Finding Committee on Un-American Activities, a California legislative committee, Hugh M. Burns, Nelson S. Dilworth, Fred H. Kraft, Louis G. Sutton, Clyde A. Watson, at a hearing before the Tenney Committee.

(4) A cause of action wherein it is claimed that plaintiff was deprived of certain rights in respect to the filing of a complaint in the Municipal Court of the City of Sacramento.

(5) A cause of action wherein it is claimed that plaintiff was deprived of certain rights by reason of a claimed invalidity of the resolution creating the Tenney Committee.

(6) A cause of action wherein it is claimed that plaintiff was deprived of certain rights pertaining to due process of law.

(7) A cause of action wherein it is claimed that plaintiff was deprived of equal protection of the laws.

(8) A cause of action wherein it is claimed that plaintiff was deprived of the right of free speech.

(9) A cause of action wherein it is claimed that plaintiff was deprived of his rights to petition the Legislature for redress of grievances.

(10) Plaintiff attempts to allege a cause of action against the defendants collectively and indi-

vidually with a cause of action based on the claim that a conspiracy existed between them.

VI.

That said complaint is uncertain in that it does not appear therein nor can it be ascertained therefrom how or in what manner or by what means:

(A) Why the subpoena referred to in Paragraph 3 of the complaint should, or what authority in law required it to, state the purpose or object of said hearing or to refer to or state the purpose or object of plaintiff's required testimony thereat, as alleged in said paragraph.

(B) Any of the matters referred to in Paragraph 4 of said complaint could or have in any manner affected any legal or constitutional right, privilege or immunity of plaintiff.

(C) The appearance of Elmer E. Robinson as a voluntary witness and denying the truth of the charges set forth in plaintiff's so-called petition could in any manner thwart the charges contained in said petition and defeat the purpose stated in said petition.

(D) The sending of either or any of the telegrams referred to in Paragraph 5 of said complaint could in any manner deprive or subject plaintiff to the deprivation of any rights, privileges or immunities secured by the Constitution and laws as set forth in Section 43, Title 8, USCA, or of the

equal protection of the laws or of equal privileges or immunities under the laws as provided for in Section 47, Subdivision 3, Title 8, USCA.

(E) Any act alleged in Paragraph 6 of said complaint could deprive plaintiff of any rights as set forth in the preceding subdivision.

(F) Any act alleged in Paragraph 7 of said complaint could or did in any manner deprive the plaintiff of any rights or privileges as particularly alleged in Subdivision D hereof.

(G) Except from the legal conclusion of the pleader, the Tenney Committee acted as judges and accused in the same cause at said hearing and/or held and/or conducted the same in an unfair, partial or unlawful manner.

(H) Any act alleged in Paragraph 8 of said complaint relating to Elmer E. Robinson deprived or tended to deprive plaintiff of any of the rights, privileges or immunities as particularly alleged in Subdivision D hereof.

(I) The asking of questions which had previously been answered by plaintiff could in any manner deprive him of any of the rights, privileges or immunities as particularly alleged in Subdivision D hereof.

(J) Whether testimony previously given by the Tenney Committee, the reading of either a true or a false criminal record of plaintiff or a newspaper article wherein an affidavit of plaintiff was

called a "tissue of lies" and an alleged telephonic statement by the Chief Counsel of the Tenney Committee to Jack B. Tenney "that Mr. Brandhove was a liar," in any manner deprived, directly or indirectly, this plaintiff of any of the rights, privileges or immunities particularly alleged in Subdivision D hereof.

(K) Any act of the Committee in respect to counsel for plaintiff as alleged in Paragraph 8 in any manner deprived plaintiff, directly or indirectly, of any of the rights, privileges or immunities particularly alleged in Subdivision D hereof.

(L) Any act alleged in Paragraph 9 of said complaint in any manner deprived plaintiff, directly or indirectly, of any of the rights, privileges or immunities particularly alleged in Subdivision D hereof.

(M) Any act alleged in Paragraph 10 of said complaint in any manner deprived plaintiff, directly or indirectly, of any of the rights, privileges or immunities particularly alleged in Subdivision D hereof.

(N) Any provision of the resolution creating the Tenney Committee is in violation of the 14th Amendment of the Constitution of the United States for want of certainty if read into any criminal statute, as alleged in Paragraph 11 of said complaint.

(O) The resolution creating the Tenney Com-

mittee is in violation of the 14th Amendment of the Constitution of the United States in any particular.

(P) Except from the legal conclusion of the pleader, that said hearing on January 29, 1949, was held for any of the purposes set forth in Paragraph 11 of said complaint.

(Q) Except from the legal conclusion of the pleader.

(1) That the conduct of said hearing was in violation of due process of law in that the purpose or object of said hearing was not disclosed to plaintiff;

(2) That said hearing was not held in a fair and impartial manner as required under the 14th Amendment of the Constitution of the United States and/or as also expressly required under the resolution creating the Tenney Committee;

(3) That the questions asked of plaintiff at said hearing were not material and proper as required by Section 9412 of the California Government Code.

(R) Any act alleged in Paragraph 12 of said complaint in any manner deprived plaintiff, directly or indirectly, of any of the rights, privileges or immunities particularly alleged in Subdivision D hereof.

(S) Except from the legal conclusion of the pleader, the acts of defendants alleged in said complaint or done or participated in by said defendants were done with intent:

(1) To intimidate and silence plaintiff and/or to deter or prevent him from effectively exercising his constitutional rights of free speech and to petition the Legislature for redress of grievances.

(2) To deprive him of the equal protection of the laws, due process of law and from the enjoyment of equal privileges and immunities as a citizen of the United States under the law.

(T) Except from the legal conclusion of the pleader, any act alleged in said complaint and particularly in Paragraph 13 thereof would intimidate, silence, prevent, deter and deprive plaintiff from any of the rights set out in Paragraph 13.

(U) The defendants or any of them conspired for any of the purposes set forth in said complaint and/or acted in furtherance of said or any conspiracy in the manner therein set forth.

(V) The defendants or any of them conspired at all.

(W) Any act of all or any of the defendants attempted to be alleged in said complaint entitles plaintiff to punitive damages.

(X) The defendant incurred expenses in the sum of Ten Thousand Dollars ($10,000.00) for all or any of the items set forth in Paragraph 15 of said complaint.

VII.

That said complaint is ambiguous in each and

every particular in which it is hereinabove alleged to be uncertain.

VIII.

That said complaint is unintelligible in each and every particular in which it is hereinabove alleged to be uncertain.

Wherefore, defendants pray that plaintiff take nothing by said action and that said complaint be dismissed, that a judgment of dismissal be entered in favor of these defendants and for their costs of suit and for such other and further relief as the Court may deem advised.

Dated: May 19, 1949.

HAROLD C. FAULKNER,
MELVIN, FAULKNER,
SHEEHAN & WISEMAN.
WILBUR F. MATHEWSON,
FRED M. HOWSER,
J. FRANCIS O'SHEA,
FRED B. WOOD,

Attorneys for Defendants Other Than Elmer E. Robinson.

NOTICE OF HEARING ON MOTION TO DISMISS

To: Plaintiff above named and to Messrs. Martin J. Jarvis, Richard O. Graw and Elmer P. Delany, his attorneys.

You and each of you will please take notice that the undersigned will bring the above motion on for hearing before this Court at Room 276, United States Courts and Post Office Building, City of San Francisco, State of California, on Monday, the 6th day of June, 1949, at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

HAROLD C. FAULKNER,
MELVIN, FAULKNER,
SHEEHAN & WISEMAN.
WILBUR F. MATHEWSON,
F. N. HOWSER,
J. FRANCIS O'SHEA,
FRED B. WOOD,

Attorneys for all defendants in the above entitled action save and except defendant Elmer E. Robinson.

Receipt of copy acknowledged.

[Endorsed]: Filed May 19, 1949.

[Title of District Court and Cause.]

MEMORANDUM OF POINTS AND AUTHORITIES ON MOTION TO DISMISS

I.

The suit is not one arising under the Constitution or laws of the United States.

A. Where diversity of citizenship is not shown, the Court has no jurisdiction unless a substantial question arising under a Federal law or the Constitution is disclosed in the pleading. Ex Parte Poresky, 290 U. S. 30.

B. Attack on the validity of State of California Resolution No. 75 creating the Senate Fact-Finding Committee on Un-American Activities does not create a substantial question of invalidity under the laws of the United States or the Constitution thereof. Dennis v. United States, 171 R. (2d) 986.

C. A suit to enforce a right which takes its origin in the laws of the United States is not for that reason alone one arising under the laws unless it really in substance involves a dispute respecting the validity, construction or effect of such a law upon the determination of which the case depends. Viles v. Symes, 129 F. (2d) 828.

D XIVth Amendment to the Constitution of the United States.

II.

That said complaint fails to disclose any facts or circumstances indicating an existing or continuing conspiracy or act interfering with or impeding in any manner any right of plaintiff under the Constitution of the United States. (See Complaint.)

III.

That several causes of action have been improperly joined. (See Rules 8, 9 and 10, Rules of Civil Procedure.)

Each claim founded upon a separate transaction or occurrence must be separately stated. Bottone v. Lindsley, 170 F. (2d) 75.

IV.

The complaint is uncertain, ambiguous and unintelligible.

V.

It is to be observed that both houses of the Legislature of the State of California, pursuant to concurrent resolution and pursuant to Section 2, Article 4 of the Constitution of the State of California,

"Resolved that the 1949 regular session of the Legislature of the State of California shall adjourn for recess at 3:00 o'clock p.m. on the 24th day of January, 1949, and shall reassemble at 12:00 o'clock m. on March 7, 1949."

VI.

That every right claimed by plaintiff to be violated was, according to the allegations of plaintiff's complaint, completely observed in so far as any act of conduct of these defendants is concerned.

VII.

That Section 43 and 47 (3) of Title 28 U.S.C.A. relied upon under the claimed facts and circumstances set forth in plaintiff's complaint as establishing a claim for relief, are void for uncertainty under the laws of the United States. Screws v. United States, 325 U. S. 91, 65 S. Ct., 1031, 1033.

Dated: May 19, 1949.

Respectfully,

HAROLD C. FAULKNER,

MELVIN, FAULKNER,

SHEEHAN & WISEMAN.

WILBUR F. MATHEWSON,

F. N. HOWSER,

J. FRANCIS O'SHEA,

FRED B. WOOD,

Attorneys for All Defendants Except Elmer E. Robinson.

Receipt of Copy acknowledged.

[Endorsed]: Filed May 19, 1949.

[Title of District Court and Cause.]

MOTION TO DISMISS COMPLAINT

Now comes Elmer E. Robinson and files this motion to dismiss the complaint of plaintiff in the above-entitled action.

I.

That said complaint does not state facts sufficient to confer upon the above-entitled court jurisdiction of the subject matter of said complaint for the following reasons and in the following particulars:

(1) That the complaint in the above-entitled action does not state facts sufficient to show that Senate Resolution No. 75, June 20, 1947, is invalid under the 14th Amendment of the Constitution of the United States if read into any criminal statute for want of certainty.

(2) That no diversity of citizenship between the parties is disclosed in said complaint.

(3) That said complaint fails to state facts sufficient to disclose any substantial claim for relief arising under the laws of the United States and/or the Constitution thereof.

II.

That the complaint in the above-entitled action does not state facts sufficient to constitute a claim upon which relief can be granted.

III.

That the complaint in the above-entitled action does not state facts sufficient to constitute a claim upon which damages may be recovered from this defendant.

IV.

That said complaint is not a short and plain statement of the claim of plaintiff showing that the plaintiff is entitled to relief.

V.

That there is a misjoinder of causes of action in that there are joined together several causes of action in said complaint and not stated separately therein, to wit:

(1) A cause of action relating to a transaction or occurrence wherein it is claimed by plaintiff that he was deprived of certain rights in respect to circulating a petition to the Legislature of the State of California.

(2) A cause of action wherein it is claimed that plaintiff was deprived of certain rights in respect to being subpoenaed to appear before the Tenney Committee.

(3) A cause of action based upon a claim that plaintiff was deprived of certain rights in respect to his appearance and the conduct of defendants, Jack B. Tenney, The Senate Fact Finding Committee on Un-American Activities, a California legislative committee, Hugh M. Burns, Nelson S. Dil-

worth, Fred H. Kraft, Louis G. Sutton, Clyde A. Watson, at a hearing before the Tenney Committee.

(4) A cause of action wherein it is claimed that plaintiff was deprived of certain rights in respect to the filing of a complaint in the Municipal Court of the City of Sacramento.

(5) A cause of action wherein it is claimed that plaintiff was deprived of certain rights by reason of a claimed invalidity of the resolution creating the Tenney Committee.

(6) A cause of action wherein it is claimed that plaintiff was deprived of certain rights pertaining to due process of law.

(7) A cause of action wherein it is claimed that plaintiff was deprived of equal protection of the laws.

(8) A cause of action wherein it is claimed that plaintiff was deprived of the right of free speech.

(9) A cause of action wherein it is claimed that plaintiff was deprived of his rights to petition the Legislature for redress of grievances.

(10) Plaintiff attempts to allege a cause of action against the defendants collectively and individually with a cause of action based on the claim that a conspiracy existed between them.

VI.

That said complaint is uncertain in that it does

not appear therein nor can it be ascertained therefrom how or in what manner or by what means:

(a) Why the subpoena referred to in Paragraph 3 of the complaint should, or what authority in law required it to, state the purpose or object of said hearing or to refer to or state the purpose or object of plaintiff's required testimony thereat, as alleged in said paragraph.

(b) Any of the matters referred to in Paragraph 4 of said complaint could or have in any manner affected any legal or constitutional right, privilege or immunity of plaintiff.

(c) The appearance of Elmer E. Robinson as a voluntary witness and denying the truth of the charges set forth in plaintiff's so-called petition could in any manner thwart the charges contained in said petition and defeat the purpose stated in said petition.

(d) The sending of either or any of the telegrams referred to in Paragraph 5 of said complaint could in any manner deprive or subject plaintiff to the deprivation of any rights, privileges or immunities secured by the Constitution and laws as set forth in Section 43, Title 8, USCA, or of the equal protection of the laws or of equal privileges or immunities under the laws as provided for in Section 47, Subdivision 3, Title 8, USCA.

(e) Any act alleged in Paragraph 6 of said complaint could deprive plaintiff of any rights as set forth in the preceding subdivision. —

(f) Any act alleged in Paragraph 7 of said complaint could or did in any manner deprive the plaintiff of any rights or privileges as particularly alleged in Subdivision D hereof.

(g) Except from the legal conclusion of the pleader, the Tenney Committee acted as judges and accused in the same cause at said hearing and/or held and/or conducted the same in an unfair, partial or unlawful manner.

(h) Any act alleged in Paragraph 8 of said complaint relating to Elmer E. Robinson deprived or tended to deprive plaintiff of any of the rights, privileges or immunities as particularly alleged in Subdivision D hereof.

(i) The asking of questions which had previously been answered by plaintiff could in any manner deprive him of any of the rights, privileges or immunities as particularly alleged in Subdivision D hereof.

(j) Whether testimony previously given by the Tenney Committee, the reading of either a true or a false criminal record of plaintiff or a newspaper article wherein an affidavit of plaintiff was called a "tissue of lies" and an alleged telephonic statement by the Chief Counsel of the Tenney Committee to Jack B. Tenney "that Mr. Brandhove was a liar," in any manner deprived, directly or indirectly, this plaintiff of any of the rights, privileges or immunities particularly alleged in Subdivision D hereof.

(k) Any act of the Committee in respect to counsel for plaintiff as alleged in Paragraph 8 in any manner deprived plaintiff, directly or indirectly, of any of the rights, privileges or immunities particularly alleged in Subdivision D hereof.

(l) Any act alleged in Paragraph 9 of said complaint in any manner deprived plaintiff, directly or indirectly, of any of the rights, privileges or immunities particularly alleged in Subdivision D hereof.

(m) Any act alleged in Paragraph 10 of said complaint in any manner deprived plaintiff, directly or indirectly, of any of the rights, privileges or immunities particularly alleged in Subdivision D hereof.

(n) Any provision of the resolution creating the Tenney Committee is in violation of the 14th Amendment of the Constitution of the United States for want of certainty if read into any criminal statute, as alleged in Paragraph 11 of said complaint.

(o) The resolution creating the Tenney Committee is in violation of the 14th Amendment of the Constitution of the United States in any particular.

(p) Except from the legal conclusion of the pleader, that said hearing on January 29, 1949, was held for any of the purposes set forth in Paragraph 11 of said complaint.

(q) Except from the legal conclusion of the pleader,

1. That the conduct of said hearing was in violation of due process of law in that the purpose or object of said hearing was not disclosed to plaintiff;

2. That said hearing was not held in a fair and impartial manner as required under the 14th Amendment of the Constitution of the United States and/or as also expressly required under the resolution creating the Tenney Committee;

3. That the questions asked of plaintiff at said hearing were not material and proper as required by Section 9412 of the California Government Code.

(r) Any act alleged in Paragraph 12 of said complaint in any manner deprived plaintiff, directly or indirectly, of any of the rights, privileges or immunities particularly alleged in Subdivision D hereof.

(s) Except from the legal conclusion of the pleader, the acts of defendants alleged in said complaint or done or participated in by said defendants were done with intent:

1. To intimidate and silence plaintiff and/or to deter or prevent him from effectively exercising his constitutional rights of free speech and to petition the Legislature for redress of grievances.

2. To deprive him of the equal protection of the laws, due process of law and from the enjoyment of

equal privileges and immunities as a citizen of the United States under the law.

(t) Except from the legal conclusion of the pleader, any act alleged in said complaint and particularly in Paragraph 13 thereof would intimidate, silence, prevent, deter and deprive plaintiff from any of the rights set out in Paragraph 13.

(u) The defendants or any of them conspired for any of the purposes set forth in said complaint and/or acted in furtherance of said or any conspiracy in the manner therein set forth.

(v) The defendants or any of them conspired at all.

(w) Any act of all or any of the defendants attempted to be alleged in said complaint entitled plaintiff to punitive damages.

(x) The defendant incurred expenses in the sum of Ten Thousand Dollars ($10,000.00) for all or any of the items set forth in Paragraph 15 of said complaint.

VII.

That said complaint is ambiguous in each and every particular in which it is hereinabove alleged to be uncertain.

VIII.

That said complaint is unintelligible in each and every particular in which it is hereinabove alleged to be uncertain.

Wherefore, defendant, Elmer E. Robinson, prays that plaintiff take nothing by said action and that said complaint be dismissed, that a judgment of dismissal be entered in favor of the defendants and for their costs of suit and for such other and further relief as the Court may deem advised.

Dated: May 19, 1949.

McGUIRE & LAHANIER.
By /s/ W. A. LAHANIER,
Attorneys for Defendant,
Elmer E. Robinson.

[Endorsed]: Filed May 19, 1949.

[Title of District Court and Cause.]

MEMORANDUM OF POINTS AND AUTHORITIES ON MOTION TO DISMISS

In support of the motion of the defendant, Elmer E. Robinson, it is his contention that he committed no acts which violated any Civil Rights of the plaintiff, and that, aside from legal conclusions, the complaint fails to allege the commission of any acts by the defendant, Elmer E. Robinson, whereby the plaintiff was deprived of any civil rights.

Where lack of diversity of citizenship is shown, Court has no jurisdiction unless a substantial Federal or Constitutional law is disclosed in the pleading. Ex Parte Poresky 29 F. S. 30.

Attack on the validity of the State of California

Resolution No. 75 creating the Senate Fact-Finding Committee on Un-American Activities does not create a substantial question of invalidity under the laws of the United States or the Constitution thereof. Dennis vs. United States, 171 F. (2d) 986. McGrain vs. Dougherty, 273 U. S. 135.

For a suit to enforce a right which takes its original in the laws of the United States is not for that reason alone one arising under the laws unless it really in substance involves a dispute respecting the validity, construction or effect of such a law upon the determination of which the law depends. Viles vs. Symes, 129 F. (2d) 828.

That each claim formed upon a separate transaction or occurrence is not separately stated in said complaint. (See for further particulars the next succeeding paragraph.) Bottone vs. Lindsley, 170 F. (2d) 75.

That if Sections 43 and 47 are relied upon under the claimed facts and circumstances set forth in plaintiff's complaint said sections are void for uncertainty under the laws of the United States. Screws vs. United States, 325 U. S. 91. (65 Supreme Court 1031 and 1033.)

That said complaint fails to disclose any facts or circumstances indicating an existing or continuing conspiracy or act interfering with or impeding in any manner any right of plaintiff under the Constitution of the United States.

For plaintiff to invoke jurisdiction of Federal District Court on grounds that he seeks protection of a

Federal right, the complaint, on its face, must appear to raise a "substantial Federal question," and mere claim in words or contention, which is obviously without merit, is insufficient. Williams vs. Miller, 48 F. (Supp.) 277, aff'd. 317 U. S. 599.

That every right claimed by laintiff to be violated was, according to the allegations of plaintiff's complaint, completely observed insofar as any act of conduct of defendant Elmer E. Robinson was concerned.

Plaintiff's complaint expressly alleges that defendant, Elmer E. Robinson, was acting as an individual and not under color of authority. Hence, no cause of action is stated as to him, even if we assume that the legal conclusions of the complaint would be sufficient to state a cause of action.

Powe vs. United States, 109 Fed. (2d) 147.

Respectfully submitted,
McGUIRE & LAHANIER.
By /s/ W. A. LAHANIER,
Attorneys for Defendant,
Elmer E. Robinson.

[Endorsed]: Filed May 19, 1949.

[Title of District Court and Cause.]

MEMORANDUM OF AUTHORITIES SUPPLEMENTING ORAL ARGUMENT ON MOTION TO DISMISS

Plaintiff attempts to state a cause of action for damages against certain of the members of the Senate of the State of California, by reason of their official conduct while serving on the Senate Fact-Finding Committee on Un-American Activities in California.

Defendants have moved to dismiss.

Defendants, members of the State Senate, respectfully urge in support of their motion:

I.

When ordinary and existing rules for the construction of pleadings are applied—plaintiff fails completely to allege any fact or circumstance showing deprivation of any right, privilege or immunity under the Constitution of the United States, including the 14th Amendment.

1. Due Process of Law. No fact is alleged indicating in the silghtest degree the deprivation of due process of law. In reading the complaint and trying to follow the argument of counsel, it appears that some claim is made that a right of the defendant was invaded by reason of having been served with a subpoena, which is made a part of the complaint.

In connection with the issuance of subpoenas by committees of the Senate or Assembly, the form

thereof is prescribed by Section 9402 of the Government Code, which reads as follows:

"A subpena is sufficient if it:

(a) States whether the proceeding is before the Senate, Assembly, or a committee.

(b) Is addressed to the witness.

(c) Requires the attendance of the witness at a time and place certain.

(d) Is signed by the President of the Senate, Speaker of the Assembly, or chairman of the committee before whom attendance of the witness is desired."

Every requirement of this section is complied with.

It must be borne in mind that the Legislature is and has been held to be "* * * the grand inquest of the Commonwealth." Ex parte McCarthy, 29 Cal. 395, 402. A witness subpoenaed before a legislative committee is analagous to a witness subpoenaed before a grand jury. Applying the analogy, we find plaintiff's claim has consistently been decided adversely to his contention. See In re Black, 47 F. 2d 543; also, Blair v. United States, 250 U. S. 273. Plaintiff cited no authorities in support of his position.

2. Freedom of Speech. The complaint is completely silent on any facts or circumstances which in the slightest degree indicated that he was deprived of freedom of speech. As a matter of fact, when he had the opportunity to speak, he spoke

the things he wanted to say, then remained silent and refused to answer any questions.

3. The privilege of petitioning the Legislature for the redress of grievances. Although a claim is made in this respect by plaintiff and appears to be the main point relied upon, plaintiff was unable at the oral argument to indicate any fact or circumstance indicating in the slightest degrees the deprivation of this right by the act of any defendant in the case at bar or anyone else.

The requirement to plead specific facts as distinguished from conclusions of law is essential in cases of this type. See opinion of Judge Wilbur in Williams v. Miller, 48 F. Supp. 277. In denying certiorari in this case, the Supreme Court of the United States held in accordance with the opinion of Judge Wilbur. See 317 U. S. 599.

II.

One of the bases of plaintiff's complaint is the claim that the resolution creating the Tenney Committee, if read into any criminal statute, is in violation of the 14th Amendment to the Constitution of the United States for want of certainty. See Paragraph 11 of plaintiff's complaint. This same attack has frequently been made upon the act of Congress creating the United States House of Representatives Committee on Un-American Activities. In the case of Dennis v. United States, 171 F. 2d 986, the court disposes of this point as follows:

"Since one of the chief points raised by appellant is a general attack on the constitutionality of the creation of the Committee and of the resolutions, rules and statute authorizing its activities, it may be said at the outset that it is the self-same Committee, operating under the same set of resolutions, rules and statute as has been recently passed on by at least two Courts of Appeals, and in two of the cases by the Supreme Court of the United States in denying petitions for certiorari. See Josephson v. United States, 2 Cir., 1947, 165 F. 2d 82, certiorari denied, 1948, 333 U. S. 838, 68 S. Ct. 609, rehearing denied, 1948, 333 U. S. 858, 68 S Ct. 731; Barsky v. United States, 1948, ... U. S. App. D. C. ....., 167 F. 2d 241, certiorari denied, 68 S. Ct. 1511, 334 U. S. 843; and Eisler v. United States, 1948, ... U. S. App. D. C. ....., 170 F. 2d 273.

(1) These cases were to the unanimous effect that the constitutionality of the authority of the Committee should be upheld, that the creation of the Committee and the matters confided to it for investigation were constitutional and lawful. * * * "

However, the question has been set at rest by the recent decision of the Supreme Court in Vern Smith v. The People of the State of California. This was a petition for appeal to the Supreme Court of the United States in which the conviction of the appellant was sought to be reversed on the grounds that Senate Resolution No. 75 (the resolution appended to the complaint) was unconstitu-

tional. The Supreme Court of the United States in passing upon this petition ruled as follows: (69 S. Ct. 893)

"Appeal from the Superior Court in and for the County of Alameda, State of California.

April 25, 1949. Per Curiam: The appeal is dismissed for want of a substantial federal question."

Further, the Supreme Court of the State of California, upon an attack upon the constitutionality of the resolution creating the "Tenney Committee," ruled against plaintiff on this subject by denying his application for a writ of habeas corpus.

III.

Claims in the form of legal conclusions are made as to the motives of the Committee in subpoenaing the witness and holding the hearing. They appear to be (a) to suppress anyone criticizing the Committee and (b) to prevent plaintiff from petitioning the Legislature.

These Claims Cannot Be Sustained Factually

In respect to (a) above, no fact is alleged in the complaint from which this inference could be drawn. On the contrary plaintiff alleges that the Committee was under attack by certain members of the State Assembly. See Exhibit "F," top of page 5. The court can take judicial notice of the fact that all such committees have been under constant attack and abuse by communists and communist inspired outlets. Such committees have likewise been criticized by others unconnected with the communistic movement.

In respect to (b) above, it is already covered in Subdivision 3 of I above.

These claims likewise cannot be sustained under the law.

In the case of Dennis v. United States, supra, the court said:

"* * * it is neither the business nor the prerogative of this court or any other court to pass upon either the wisdom of Congress in setting up the Committee, the private or public character of members of the Committee or the propriety of the procedure of the Committee unless it transgress the authority committed to it by the Congress under the Constitution."

The decision in United States v. Josephson, 165 F. 2d 82, touches upon this subject and is well worth considering by the court.

In the oral argument we read to the court from Eisler v. United States, 170 F. 2d 273. The part which we read is found on page 278 and is as follows:

"* * * During the course of the trial defense counsel sought to introduce evidence to show that the Committee's real purpose in summoning appellant was 'to harass and punish him for his political beliefs * * * and that the Committee acted for ulterior motives not within the scope of its or Congress' powers.' The lower court properly refused to admit such evidence, on the ground that the court had no authority to scrutinize the motives of Congress or one of its committees. * * *"

Although there may be no presumption as to the constitutionality of legislation enacted when civil rights are concerned, the fact still remains that the law is that there is a presumption that the action of the legislative body is legitimate. See cases heretofore cited and McGrain v. Daugherty, 273 U. S. 135.

IV.

State Senators Are Exempt From Civil Liability

Plaintiff's cause of action must fall for a further reason:

Members of the State Senate are privileged against civil liability arising out of the performance of legislative functions. The allegations in the complaint show and it is insisted by the plaintiff that the actions of the State Senate complained of in the present case were performed during a session of the Legislature and in the official discharge of the duties of the Senate under a law which plaintiff claims is unconstitutional.

The privileges secured to members of a legislative body, both state and federal, by which they are exempt from civil responsibility for their acts, resulting from the nature and in the execution of their office, are definite and positive. The leading case on this subject is Kilbourn v. Thompson, 103 U. S. 168. The discussion on this interesting subject starts on page 201. On page 203 the Supreme Court quotes with approval the language of Mr. Chief Justice Parsons in Coffin v. Coffin. The basis of the privilege is well expressed, as follows:

"* * * 'These privileges are thus secured, not with the intention of protecting the members against prosecutions for their own benefit, but to support the rights of the people, by enabling their representatives to execute the functions of their office without fear of prosecutions, civil or criminal. * * *' "

The subject is well discussed in Barsky v. U. S., 167 F. 2d 241, at 250. This latter case also contains a splendid discussion of the entire subject matter of plaintiff's law suit.

The privileges discussed in this subdivision are clearly inherent in state legislators. This is pointed out by the quotation cited with approval in Kilbourn v. Thompson, supra, at page 204 by Mr. Justice Story.

Section 1 of Article IV of the Constitution of the State of California provides: "The legislative power of the state shall be vested in a Senate and Assembly which shall be designated 'The Legislature of the State of California,' * * *." The principles of law laid down in Kilbourn v. Thompson and the citations from Coffin v. Coffin and Chief Justice Story therein contained are inherent in the Legislature of the State of California. There is no limitation on this right in the State Constitution. The language of Chief Justice Gibson in Collins v. Riley, 24 C. 2d 912, commencing at the bottom of page 915, is particularly applicable:

"This argument overlooks the fact that our Constitution is not a grant of power but rather a limitation or restriction upon the powers of the Legis-

lature (In re Madera Irr. Dist., 92 Cal. 296 (28 P. 272, 675, 29 Am. St. Rep. 106, 14 L.R.A. 755); Macmillan Co. v. Clarke, 184 Cal. 491 (194 P. 1030, 17 A.L.R. 288); People ex rel. Smith v. Judge of the Twelfth District, 17 Cal. 547; Sheehan v. Scott, 145 Cal. 684 (79 P. 350); Fifts v. Superior Court, 6 Cal. 2d 230 (57 P. 2d 510); Mitchell v. Winnek, 117 Cal. 520 (49 P. 579)) and 'that we do not look to the Constitution to determine whether the Legislature is authorized to do an act, but only to see if it is prohibited.' (Fitts v. Superior Court, supra.) If there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action. Such restrictions and limitations are to be construed strictly, and are not to be extended to include matters not covered by the language used."

A splendid discussion of the entire subject matter commences on page 403 of the decisions of the Supreme Court of the State of California in Ex parte McCarthy, 29 Cal. 395.

The law seems to be clear on the subject that members of the State Senate of California are exempt from any civil liability by reason of acts performed in their functions as state legislators. Other cases which touch upon this subject and many additional reasons for supporting the independence of the Legislature from interference by any other branch of the government are Hearst v. Black, 87 F. 2d 68, commencing at the bottom of page 71; United States v. Bryan, 72 F. Supp. at 58; Cochran v. Couzens, 42

F. 2d 783. This is a later case applying the reasoning in Kilbourn v. Thompson and Coffin v. Coffin, supra.

The same principle which exempts the state legislator when performing his legislative function also applies to judges of courts of record. A splendid discussion on this subject is found in the opinion of the Supreme Court of the United States in the leading case of Spalding v. Vilas, 161 U. S. 483.

A further observation on this subject: When the question was presented to counsel for plaintiff to discuss with the court this subject matter, counsel in his oral argument discussed everything except the exemption of state legislators from personal responsibility. No cases were cited by plaintiff inconsistent with the views here expressed.

It is respectfully submitted that the complaint should be dismissed with prejudice.

Dated: June 18, 1949.

/s/ HAROLD C. FAULKNER,
MELVIN, FAULKNER,
SHEEHAN & WISEMAN.
F. N. HOWSER,
J. FRANCIS O'SHEA,
FRED B. WOOD,

Attorneys for All Defendants in the Above-Entitled Action Save and Except Defendant Elmer E. Robinson.

[Endorsed]: Filed June 18, 1949.

[Title of District Court and Cause.]

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DENIAL OF DEFENDANTS' MOTIONS TO DISMISS COMPLAINT

I.

Jurisdiction of the Federal Court in the Instant Case.

By enacting section 43 of U.S.C, Title 8, Congress gave a right of action sounding in tort to every individual whose federal rights are infringed by any person acting under color of state law.

Picking v. Penn. Ry. Co.,
151 F. (2d) 240, 249.

Hague v. C.I.O.,
307 U. S. 496.

Screws v. United States,
325 U. S. 91.

Refoule v. Ellis,
74 F. Supp. 336.

The present action is predicated upon sections 43 and 47(3) of U.S.C. Title 8 and section 51, 52 of U.S.C. Title 18 which are construed together as being in pari materia with each other.

Picking v. Penn. Ry. Co.,
(supra) p. 248.

Hague v. C.I.O.,
(supra) pp. 531, 532.

United States v. Classic,
313 U. S. 299.

Screws v. United States,
(supra) pp. 98, 99.

Gordon v. Garrson,
(DC Ill. 1948) 77 F. Supp. 477:

Federal Court has jurisdiction by virtue of section 41(14) of Title 28 U.S.C. and hence diversity of citizenship and jurisdictional amount need not be alleged in complaint under section 43 and sections 47, 48 of Title 8 U.S.C.

II.

State Law Cannot Vest Any Person With Immunity to Violate the Federal Rights of Another

The provisions of the federal Civil Rights Act are directed against anyone clothed with state authority who violates the federal rights of another by abuse of his state authority.

United States v. Classic,
(supra) p. 326:

"Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken 'under color of' state law."

Ex parte Virginia,
100 U. S. 339, 346, 347:

"* * * A State acts by its legislative, its executive or its judicial authority. It can act in no other way. The constitutional provision therefore must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a State government, deprives another of property, life or liberty without due process of law, or denies of takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with State's power, his act is that of the State. This must be so, the constitutional prohibition has no meaning. Then the State has clothed one of its agents with power to annul or evade it."

In Picking v. Penn. Ry. Co., (supra) it was held:

Congress by enacting section 43 Title 8 U.S.C. intended to abrogate absolute privilege conferred by common law upon state judicial officers in performance of their duties to the extent indicated by said section.

Where a cause of action against the Governor of Pennsylvania based on his acting upon a warrant for extradition of Plaintiffs to New York, arose under section 47 Title 8 U.S.C., Pennsylvania statutes sections 192, 292 relieving the Governor of liability if he based his action upon advice of the Department of Justice could not relieve him from liability in the instant case.

See also: Screws v. United States, (supra) p. 114 and cases there cited Cf. notes 6-8.

"Violation of state law there may be. But from this no immunity to federal authority can arise where any part of the Constitution has made it supreme. To the Constitution state officials and the states themselves owe first obligation. The federal power lacks no strength to reach their malfeasance in office when it infringes constitutional rights. If that is a great power, it is one generated by the Constitution and the Amendments to which the states have assented and their officials owe prime allegiance.

"The right not to be deprived of life or liberty by a state officer who takes it by abuse of his office and its power is such a right. To secure these rights is not beyond federal power. This, sections 19 and 20 have done in a manner history has long since validated." (Rutledge, J. concurring in result, Screws v. United States, p133.)

Whether the federal law, as distinguished from state law, can vest such immunity in anyone exercising federal governmental power, is not in issue in this case, and therefore cases cited by defendants with respect to Congress or congressional committees cannot support the contention made by defendants on oral argument in this case that they are immune from the sanctions of the Civil Rights Act. To hold otherwise flys in the face of the purpose and the language of the Civil Rights Act, which has been applied not only to improper state legislation, but

also to members of the state judiciary, a state Governor, state school boards and state election officials as well as to peace officers of a state.

Wherever the federal Civil Rights Act applies, damages are recoverable as well as injunctive relief.

Picking v. Penn. Ry. Co.,
(supra).

Gordon v. Garrson,
(supra).

Chapman v. King,
154 F. (2d) 460.

Bomar v. Keyes,
162 F. (2d) 136.

Brickhouse v. Brooks,
165 F. 534.

III.

The Present Action Is Based on Intentional Abuse of State Authority to Deny a Political Opponent: (a) The Right of Free Speech, (b) the Right to Petition the Legislature for Redress of His Grievances, (c) the Right to a Fair and Impartial Hearing in Matters Concerning His Person, Privacy, Opportunity to Earn a Living and His Honor, and (d) the Equal Protection of the Laws.

All these rights are fundamental federal rights and as such are protected by the federal Constitution and the laws of the United States, and therefore within the provisions of sections 43 and 47(3).

Hague v. C.I.O.,
(supra).

United States v. Classic,
(supra).

Screws v. United States,
(supra).

The Complaint necessarily read as a whole alleges in substance that when the defendants became aware of plaintiff's political criticism voiced in his petition for the purpose of persuading the legislators of California to discontinue further appropriations for the Tenney Committee, they abused their state authority as members of the criticized legislative committee by using said power to silence plaintiff, vilify his character, deter him from further action, this by attempting to cause the initiation of a criminal prosecution for perjury by state telegrams to various district attorneys, by compelling his attendance at an unfair and partial hearing of said committee, by citing him for contempt at such hearing on his refusal to answer questions on the grounds raised by him at said hearing and pleaded by reference in the Present Complaint, and by compelling him to stand trial on a criminal contempt charge after having suffered imprisonment based on such charge.

A clear answer to defendants' question at the oral argument on their motions to dismiss in this case as to how free speech and freedom to petition the Legislature were violated by the conduct of defendants

alleged in the Complaint, is that these freedoms were infringed upon by more subtle and artful methods than putting a gag in one's mouth or snatching a petition from one's hands; not only is it the supreme law of the land that these freedoms can be effectively exercised only in the absence of State suppression, but it is a fundamental principle upon which our democracy was founded.

If he who dares to speak his mind is for that reason subject to the treatment accorded plaintiff by state authority without such authority having violated the federal law on the pleaded facts of the instant case, then those freedoms become words without substance.

Thornhill v. Alabama,
310 U. S. 88, 97.

Thomas v. Collins,
323 U. S. 516, 530.

Jones v. Securities Comm.,
298 U. S. 1, 26.

Schneiderman v. United States,
320 U. S. 118.

West Va. State Bd. of Ed. v. Barnette,
319 U. S. 624.

Hannegan v. Esquire,
327 U. S. 146.

Terminiello v. City of Chicago,
93 L. Ed. Adv. Op. 55.

IV.

It Is Irrelevant Whether the California Legislature Was or Was Not in Session at the Time of the Tenney Committee Hearing in Question and Whether or Not Said Committee Can Properly Hold Hearings Between Sessions of the Legislature.

He who is clothed with state authority and purports to exercise the same is responsible under the Civil Rights Act even if the wrong done exceeded the state power vested in the wrongdoer.

Home Tel. & Tel. Co. v. Los Angeles,
227 U. S. 278, 287.

Screws v. United States,
(supra) pp. 110, 114, 115.

United States v. Classic,
(supra) p. 326.

As a matter of fact, if it be assumed that the committee in question could not lawfully hold the hearing complained of as defendants have urged on this Court, than plaintiff would have to show no more than this fact to conclusively establish a violation of section 43 of the Civil Rights Act by defendants.

V.

The Issue of the Constitutionality of the California Senate Resolution Creating the Tenney Committee Is Immaterial in the First Instance and

Need Not Be Gone Into Before the Facts as to Other Issues Are Determined.

United States v. C.I.O.,
335 U. S. 106, 110, 124, 125.

Rescue Army v. Municipal Court,
331 U. S. 549, 568, 569.

Ashwander v. T. V. A.,
297 U. S. 288, 346-348 and cases there cited.

Williams v. Miller,
(DC Cal. 1942) 48 F. Supp. 277; affirmed
317 U. S. 599, holding;

In considering the sufficiency of a complaint as raising substantial federal question within the jurisdiction of the federal court, essential facts should be determined before passing upon grave constitutional questions.

For another aspect of this question,
See: Anderson v. Meyers,
182 F. 233; affirmed 238 U. S. 368.

VI.

Liability of Defendant Robinson

Plaintiff's cause of action under section 43 extends to any person who, without himself being clothed with state authority, engaged in a conspiracy with others so clothed and acting under color of state law.

Downs v. United States,
3 F (2d) 855, 857.

Picking v. Penn. Ry. Co.
(supra).

Johnson v. United States,
158 F. 69.

"A defendant, therefore, may be convicted of a conspiracy to commit an offense when in the nature of things he could not have committed the offense himself, if it be an offense which one of his co-conspirators could commit."

See also: 11 Am. Jur. 547 footnote 7; 5 A.L.R. 787; 74 A.L.R. 1114.

In Picking v. Penn Ry Co., 5 F. R. D. 76 at 77 on motion for a more specific statement the Court stated the rule as follows:

"In the complaint in a civil conspiracy case such as this in order to be sufficiently specific and definite it should be alleged: (1) That the defendants conspired to do an unlawful act; (2) facts as to the acts performed by each defendant in furtherance of the conspiracy which acts were not privileged or compelled by law; (3) facts as to the overt acts in pursurance of the conspiracy done by certain of the alleged conspirators; (4) facts from which the Court can see, if the facts are true, the damage which would naturally or possibly result from the acts stated."

Applying these criteria to the instant case:

By paragraphs 2, 3, 5, and 8 plaintiff has incorporated by reference Exhibits A, B, C, D, E, and F which are attached to and pleaded as part of the instant complaint. Paragraph 14 of the present complaint sets out the civil conspiracy coupled with

paragraph 13 therein. (Requirement #1.) Paragraphs 3 up to and including 14 satisfy requirement #2 in the Picking case. Paragraphs 4, 5, 6, 7, 8, 13, and 14 meet requirement #3 as to defendant Robinson. And paragraph 10 and the whole complaint comply with requirement #4 hereinabove set forth. See also in particular pages 15 up to and including 17, plaintiff's Exhibit F, re defendant Robinson.

All of the defendants including defendant Robinson, since they engaged in such conspiracy are liable in damages also under section 47(3).

Picking v. Penn Ry. Co.,
5 F. R. D. 76, 77.

"If two persons pursue by their acts the same object often by the same means, one performing one part of the act and the other another part of the act, so as to complete it with a view to the attaining of the object which they are pursuing, this will be sufficient to constitute a conspiracy. It is not essential that each conspirator have knowledge of the details of the conspiracy, or of the exact part to be performed by the other conspirators in execution thereof; nor is it necessary that the details be completely worked out in advance to bring a given act within the scope of the general plan."

VII.

State Court Proceedings Prior to This Action

On oral argument on their motions to dismiss, defendants underline the fact that a petition by plain-

tiff for an extraordinary writ was denied by the California Supreme Court.

The actual facts in regard to said writ are as follows: After plaintiff's arrest and incarceration pursuant to the criminal contempt charge filed on behalf of The Tenney Committee, and prior to standing trial on said charge, plaintiff asked the California Supreme Court for an extraordinary writ in the nature of habeas corpus to restore him to his liberty without the necessity of standing trial. Since the California Supreme Court would not go into the important constitutional questions raised by plaintiff's petition prior to a determination of the facts at trial, the extraordinary relief was denied. Obviously this denial by the Court decided nothing more than plaintiff's right to relief by extraordinary process before determination of the facts at trial.

Thus the trial took place which resulted in a hung jury with the count of 11 to 1 for acquittal of this plaintiff, 11 of the jurors stating that they did not believe The Tenney Committee hearing in question was either fair or impartial.

Wherefore, it is respectfully submitted that the defendants' motions to dismiss Complaint, and each of them, be denied.

Dated: San Francisco, California, June 16, 1949.

/s/ MARTIN J. JARVIS,
/s/ RICHARD O. GRAW.
/s/ ELMER P. DELANY,
Attorneys for Plaintiff.

Affidavit of Service by Mail attached.

[Endorsed]: Filed June 18, 1949.

[Title of District Court and Cause.]

SUPPLEMENTAL MEMORANDUM OF DEFENDANT ELMER E. ROBINSON

Defendant Elmer E. Robinson files this supplemental memorandum in support of his motion to dismiss plaintiff's complaint.

It is, and has been, this defendant's position that the complaint fails to allege a single fact from which it can be remotely inferred that any act of this defendant deprived plaintiff of any civil rights.

It is a strange line of reasoning to propose that plaintiff's freedom of speech was curtailed because defendant Robinson exercised his right of free speech in answering the statements made by plaintiff.

Plaintiff appears to argue that he alone is entitled to the right to freedom of speech, and that any person undertaking to answer him is violating this right.

It is submitted that this defendant at no time did anything different than would be expected of any normal person desiring to be heard in his own defense in any forum where his honor or integrity is attacked.

The supplemental brief of the other defendants fully points out the deficiencies in plaintiff's complaint, and correctly points out the legal and factual barriers to plaintiff's right to recover damages.

In addition to the points raised by the other defendants, this defendant again calls the court's attention to his status as a private citizen as pleaded in plaintiff's complaint.

At the hearing on June 13th, plaintiff's counsel indicated that they faced a substantial legal problem so far as the defendant Elmer E. Robinson was concerned. This problem arises from the law that the Federal Government is without power to enact legislation granting a cause of action against an individual, who violates a citizen's civil rights, where such individual does not act under color of State authority. Powe vs. United States, 109 Fed. (2) 147.

Plaintiff endeavors however, to hold the defendant, Elmer E. Robinson on a theory that even though he would not be responsible acting alone, he is responsible if he conspires with persons who are acting under color of State authority. In support of this position, counsel for plaintiff again cited the court to the cases referred to in their memorandum in support of the Order to Show Cause for a preliminary injunction in the previous action No. 28729H in the above court.

These cases merely hold that A may be criminally guilty of conspiring with B to commit a criminal act, even though A could not commit the act himself. For example, in the Downs case, 3 Fed. (2) 855, it was held that officers of the law could be convicted of conspiring with two other persons to bribe themselves even though they could not personally be convicted of the substantive crime of offering themselves a bribe. In the Rabinowitch case, 238 U. S. 78, six persons were indicted for conspiracy to violate the United States Bankruptcy Act

relating to the concealing of property. Three of the persons owned the property; three did not. However, the court properly held that all six could be convicted of conspiracy to conceal the property.

These cases cited by counsel are criminal cases, and obviously not applicable in the instant case, because in each of the cases cited, a conspiracy to commit a particular crime was a separately recognized offense within itself.

Wherefore, defendant Elmer E. Robinson respectfully submits that plaintiff's complaint be dismissed.

McGUIRE & LAHANIER.
By /s/ W. A. LAHANIER,
Attorney for Defendant
Elmer E. Robinson.

[Endorsed]: Filed June 20, 1949.

[Title of District Court and Cause.]

ORDER

Defendants' Motion to Dismiss having been briefed, argued, and submitted for ruling,

It Is Ordered that the Motion be and the same hereby is Granted.

Dated:

/s/ GEORGE B. HARRIS,
United States District Judge.

Dennis v. U. S., 171 F. 2d. 986; Smith v. California, 199 Pacific 2d, 325 certiorari denied 336 U. S.

957; Eisler v. U. S., 170 F. 2d 273; Barsky v. U. S., 167 F. 2d 241, 250; Keppleman v. Upton, 84 F. Supp. 478.

[Endorsed]: Filed November 9, 1949.

In the District Court of the United States for the Northern District of California, Southern Division

No. 28711H

WILLIAM PATRICK BRANDHOVE,

Plaintiff,

vs.

JACK B. TENNEY; THE SENATE FACT-FINDING COMMITTEE ON UN-AMERICAN ACTIVITIES, a California legislative committee; HUGH M. BURNS; NELSON S. DILWORTH; FRED H. KRAFT; LOUIS G. SUTTON; CLYDE A. WATSON; and ELMER E. ROBINSON,

Defendants.

JUDGMENT ON MOTIONS TO DISMISS

This cause came on to be heard on defendants' motions to dismiss and the Court having granted said motions as to each and all the defendants,

It is hereby Ordered, Adjudged and Decreed that

the action be dismissed on the merits as to each and all of the defendants, and that defendants recover their costs.

Dated: San Francisco, California, November 16, 1949.

/s/ GEORGE B. HARRIS,
United States District Judge.

Approved as to form:

/s/ HAROLD C. FAULKNER,
/s/ W. A. LAHANIER,
Defendants' Attorneys.

[Endorsed]: Filed November 17, 1949.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that William Patrick Brandhove, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on November 16, 1949.

Dated: San Francisco, California, November 22, 1949.

/s/ MARTIN J. JARVIS,
/s/ RICHARD O. GRAW,
/s/ ELMER P. DELANY,
Attorneys for Appellant.

[Endorsed]: Filed December 5, 1949.

[Title of District Court and Cause.]

STATEMENT OF APPELLANT OF THE POINTS ON APPEAL ON WHICH HE INTENDS TO RELY

Plaintiff and appellant hereby sets forth the following points on which he intends to rely on appeal:

1. The Court erred in granting the motion to dismiss made by each and all of the defendants, excepting defendant Robinson, and erroneously dismissed the action as to said defendants.

A. Plaintiff's complaint states a cause of action for damages under the Civil Rights Act against said defendants.

B. State law cannot vest any person with immunity to violate the federal rights of another.

C. The resolution of the California State Senate creating the defendant committee known as The Senate Fact-Finding Committee On Un-American Activities is unconstitutional.

2. The Court erred in granting the motion to dismiss made by defendant Elmer E. Robinson and erroneously dismissed the action as to said defendant.

a. Points A, B and C supra.

b. Plaintiff's cause of action under the Civil Rights Act extends to any person who, without himself being clothed with state authority, engaged in

a conspiracy with others so clothed and acting under color of state law.

Dated: San Francisco, California, November 30, 1949.

/s/ MARTIN J. JARVIS,
/s/ RICHARD O. GRAW,
/s/ ELMER P. DELANY,
Attorneys for Plaintiff and Appellant.

[Endorsed]: Filed December 5, 1949.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing documents, listed below, are the originals filed in this Court, in the above-entitled case, and that they constitute the Record on Appeal herein, as designated by the Appellant, to wit:

Complaint for Damages Under Civil Rights Act—Contains Exhibits A, B, C, D, E and F.

Motion to Dismiss Complaint—By Defendants other than Elmer E. Robinson.

Memorandum of Points and Authorities on Motion to Dismiss—By Defendants other than Elmer E. Robinson.

Motion to Dismiss Complaint—By Elmer E. Robinson.

Memorandum of Points and Authorities on Motion to Dismiss—By Elmer E. Robinson.

Plaintiff's Memorandum of Points and Authorities In Support of Denial of Defendants' Motions to Dismiss Complaint.

Supplemental Memorandum of Defendant Elmer E. Robinson.

Memorandum of Authorities Supplementing Oral Argument on Motion to Dismiss—By Defendants other than Elmer E. Robinson.

Order Granting Defendants' Motion to Dismiss.

Judgment on Motions to Dismiss.

Notice of Appeal.

Designation of Record on Appeal.

Statement of Appellant of Points on Appeal on Which He Intends to Rely.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 15th day of December, A.D. 1949.

C. W. CALBREATH,
Clerk.

[Seal] By /s/ M. E. VAN BUREN,
Deputy Clerk.

[Endorsed]: No. 12430. United States Court of Appeals for the Ninth Circuit. William Patrick Brandhove, Appellant, vs. Jack B. Tenney; The Senate Fact Finding Committee on Un-American Activities, a California legislative committee; Hugh M. Burns, Nelson S. Dilworth, Fred H. Kraft, Louis G. Sutton, Clyde A. Watson and Elmer E. Robinson, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed: December 16, 1949.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals
For the Ninth Circuit
No. 12430

WILLIAM PATRICK BRANDHOVE,
Appellant.

vs.

JACK B. TENNEY; THE SENATE FACT-FINDING COMMITTEE ON UN-AMERICAN ACTIVITIES, a California legislative committee; HUGH M. BURNS; NELSON S. DILWORTH; FRED H. KRAFT; LOUIS G. SUTTON, CLYDE A. WATSON and ELMER E. ROBINSON,
Appellees.

DESIGNATION OF RECORD ON APPEAL AND STATEMENT OF POINTS

The Clerk will please prepare the Record on Appeal and include there in the following:

1. Plaintiff's complaint.

2. Motion to dismiss complaint by defendants Jack B. Tenney; The Senate Fact-Finding Committee On Un-American Activities, a California legislative committee; Hugh M. Burns, Nelson S. Dilworth; Fred H. Kraft; Louis G. Sutton; Clyde A. Watson, together with said defendants' Memorandum of Points and Authorities on Motion to Dismiss.

3. Motion to Dismiss complaint by defendant Elmer E. Robinson together with said defendant's Memorandum of Points and Authorities on Motion to Dismiss.

4. Plaintiff's Memorandum of Points and Authorities in support of Denial of defendants' Motions to Dismiss Complaint.

5. Supplemental Memorandum of defendant Elmer E. Robinson.

6. Memorandum of Authorities (by defendants other than Elmer E. Robinson) Supplementing Oral Argument on Motion to Dismiss.

7. Order granting defendants' Motion to Dismiss dated November 9, 1949.

8. Judgment on Motions to Dismiss.

9. Notice of Appeal with date of filing.

10. This Designation.

11. Statement of Appellant of the Points on Appeal on which he intends to rely.

Statement of Points

Appellant hereby adopts the Statement of Appellant of the Points on Appeal on Which He Intends to Rely heretofore filed in the District Court of the United States for the Northern District of California, Southern Division in this action.

Dated: San Francisco, California, December 15, 1949.

/s/ MARTIN J. JARVIS,
/s/ RICHARD O. GRAW,
/s/ ELMER P. DELANY,
Attorneys for Appellant.

Affidavit of Service by mail attached.

[Endorsed]: Filed December 16, 1949.

No. 12430

United States
Court of Appeals
For the Ninth Circuit

WILLIAM PATRICK BRANDHOVE,

Appellant,

vs.

JACK B. TENNEY; THE SENATE FACT-FINDING COMMITTEE ON UN-AMERICAN ACTIVITIES, a California Legislative Committee; HUGH M. BURNS; NELSON S. DILWORTH; FRED H. KRAFT; LOUIS G. SUTTON, CLYDE A. WATSON and ELMER E. ROBINSON,

Appellees.

Appeal from the United States District Court,
Northern District of California,
Southern Division.

Proceedings Had in the United States Court of Appeals
for the Ninth Circuit

United States Court of Appeals for the Ninth Circuit

Excerpt from Proceedings of Thursday, June 1, 1950.

Before: Healy, Circuit Judge;
Mathes and Driver, District Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Ordered appeal herein argued by Mr. Martin J. Jarvis, counsel for appellant, and by Mr. Harold Faulkner, counsel for appellees other than Robinson, and by Mr. W. A. Lahanier, counsel for appellee Robinson, and submitted to the court for consideration and decision.

United States Court of Appeals for the Ninth Circuit

Excerpt from Proceedings of Friday, June 30, 1950.

Before: Healy, Circuit Judge;
Mathes and Driver, District Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENT

Ordered that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the Clerk, and that a judgment be filed and recorded in the minutes of this court in accordance with the opinion rendered.

In the United States Court of Appeals
for the Ninth Circuit
No. 12,430

WILLIAM PATRICK BRANDHOVE,
Appellant,

vs.

JACK B. TENNEY; THE SENATE FACT-FINDING COMMITTEE ON UN-AMERICAN ACTIVITIES, a California Legislative Committee; HUGH M. BURNS; NELSON S. DILWORTH; FRED H. KRAFT; LOUIS G. SUTTON; CLYDE A. WATSON, and ELMER E. ROBINSON,
Appellees.

Appeal from the United States District Court, Northern District of California, Southern Division

June 30, 1950

Before: Healy, Circuit Judge;
Mathes and Driver, District Judges.

Healy, Circuit Judge.

OPINION

Appellant sued under §§ 43 and 47(3) of Title 8 USCA to recover damages for alleged violations of his civil rights.[1] With one exception the defendants (appellees) are members of what was known as the Tenney Committee of the California State

[1] "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any

Senate, empowered by a resolution adopted in 1947 to inquire into un-American activities. The remaining defendant is Mayor Robinson of San Francisco. The appeal is from a judgment of dismissal for failure of the complaint to state a cause for relief.

The complaint incorporates an extensive amount of evidentiary matter, bearing for the most part upon a hearing of the Tenney Committee (hereafter referred to as the Committee) before which appellant was summoned as a witness.[2] The plead-

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citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress," 8 USCA §43.

"If two or more persons in any State or Territory conspire . . ., for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; . . . in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators." 8 USCA § 47(3).

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[2] A transcript of the Committee hearing is attached an an exhibit.

ing shows that on January 28, 1949, appellant circulated among the members of the California legislature, then in session at Sacramento, a protest against an appropriation for the continuance of the Committee's activities. The protest, or petition as it is termed in the complaint, charged that the Committee had "used" appellant "as an instrument to smear Congressman Franck R. Havenner as a "Red" when he was candidate for Mayor of San Francisco in 1947, and that the Republican machine in San Francisco and the Campaign management of Elmer E. Robinson, Franck Havenner's opponent, conspired with the Tenney Committee to this end." The particulars of the charge are lengthy but unimportant here. While appellant was engaged in circulating his protest a subpena was served upon him directing him to appear as a witness before the Committee on the following day, January 29, at three o'clock in the afternoon. He appeared at that time with his counsel.[3]

Upon being sworn as a witness appellant gave his name, residence, and occupation, and then referred the Committee to his counsel, who objected to any further questioning. One of the grounds of the objection was that "The purpose of such questions has not been disclosed to Mr. Brandhove and the same are not for a legislative purpose or in aid of legislation." Other grounds were that ap-

[3]Pursuant to a requirement of the state constitution, the legislature adjourned for a period of 30 days, commencing at three o'clock p.m. on January 29, 1949, hence was in recess at the time fixed for appellant's appearance.

pellant had been subpenaed because of the charges made in his petition to the legislature; that the Committee was not and could not be a fair and impartial tribunal; that it was engaged in a political and not a legislative investigation in attempting to acquit itself of appellant's charges; that a joint committee of the Assembly and Senate was the only proper body to investigate such charges; and that the Committee had itself vouched for appellant's veracity by releases and reports in the past. The objections were overruled by the Chairman, but appellant was instructed by his counsel not to respond to questioning. The Chairman then inquired of appellant, "Is it going to be your conduct that you are not going to answer any questions presented to you by the Committee?"; to which the answer was, "On advice of counsel, I will not, no, sir."

Questions were then directed to appellant concerning his acquaintance with various named persons, and he was interrogated with respect to his relations with Communists and his affiliation with the Communist Party.[4] All of the questions he declined to answer on the grounds already indicated. The interrogation was presently dropped and apparently the witness was permitted to leave the stand. In the subsequent course of the hearing Chairman Tenney remarked that "Mr. Brandhove has a criminal record." He thereupon made a lengthy statement for the record, in the course of

[4]These same questions, it is alleged, had been put to appellant at former sessions of the Committee, and had been answered by him.

which he recounted crimes with which he said appellant had been charged in various cities over a period ranging from 1930 to 1947, including, among other things, charges of sodomy, grand theft, burglary, malicious mischief, and defrauding an innkeeper. This statement is alleged in the complaint to have been false. Other derogatory matter put into the record by the Chairman included a reference to a newspaper article wherein an affidavit of appellant was termed "a tissue of lies." There was much more along the same line. Finally, Mayor Robinson was called and testified at length in refutation of the charges Brandhove had made against him.

During the course of the session the Committee resolved that a complaint be filed in the proper court charging appellant with a misdemeanor in refusing to answer questions. This course was followed and appellant was arrested on a complaint preferred by the Chairman and was confined in jail from February 1 to February 15, 1949. A trial of the charge before a jury on March 5, 1949, resulted in a disagreement, and the case was dismissed four days later on motion of the district attorney.

Appellant's complaint pieces together these proceedings and incidents, plus the sending by the Committee of two telegrams described in the footnote.[5] The pleading then alleges that the various acts described were "done or participated in by

[5]Copies of these telegrams are attached to the complaint as exhibits. They are dated January 28, 1949, are signed by the Committee chairman and

said defendants with malice and intent to intimidate and silence plaintiff and deter and prevent him from effectively exercising his constitutional rights of free speech and to petition the Legislature for redress of grievances, and also to deprive him of the equal protection of the laws, due process of law, and of the enjoyment of equal privileges and immunities as a citizen of the United States under the law, and so did intimidate, silence, deter, and prevent and deprive plaintiff."

Counsel for appellees argue that this allegation amounts to no more than the conclusions of the pleader, and they claim that the evidentiary matter incorporated in the complaint belies the conclusions. We are unable to agree with the latter proposition. The conclusions are of ultimate fact and some of them appear not to be without a measure of support in the circumstances disclosed.

In such posture of affairs the case should proceed to trial. Of course, a jury or judge may conclude from the showing that the Committee did no more than make legitimate use of the power conferred upon it. The questions put to appellant,

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vice-chairman, and are addressed to the district attorneys of San Francisco and Alameda counties. They refer to Brandhove's charges circulated among the legislators and to sworn testimony of Brandhove earlier given before the Committee, said in the telegrams to be inconsistent or at variance with the charges. The officials addressed are urged to charge Brandhove with perjury or to have the matter presented to the grand jury of their respective counties. It does not appear whether the officials addressed took any action responsive to the telegrams, but it is fairly inferable that they did not.

taken by themselves, seem to be unobjectionable, and they bear substantial relation to the general subject the Committee was empowered to inquire into. In these inquiries, too, it is possible to discern a purpose on the Committee's part of determining whether sworn information appellant had formerly given the Committee might still be relied on as true, or whether it should now be disregarded as false. We think, also, that the Committee, had it seen fit to do so, might with propriety have questioned appellant relative to the charges he had made against it. The California Court has held that when the integrity of a legislative body, or of its members, is impugned it may lawfully inquire into the subject matter.[6] And there is a state statute making it a misdemeanor for a person summoned as a witness before a legislative committee to refuse to answer material and proper questions.[7]

An individual haled before an inquisitorial body of this type can have no legal ground for complaining of the body's use of its powers even though, as a consequence of the inquisition, the individual be made to suffer serious and unjustified harm to his reputation or his ability to earn a living. But he may have grounds for complaining of an abuse by the body of its powers if such conduct goes so far as to abridge a federally protected right.[8] Ap-

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[6]Ex parte McCarthy, 29 Cal. 395, 404.

[7]Section 9412 of the California Government Code.

[8]Cf. Screws v. United States, 325 U. S. 91; Snowden v. Hughes, 321 U. S. 1.

pellant, it must be remembered, did not stand on equal terms with this Committee. He had the status of a private citizen only, whereas the Committee was armed with the power of the state. In doing what it did here it was at the least acting under color of authority.

Appellant had the constitutional right freely to speak his mind and expose his thoughts. If what he had said in his petition was false and libelous, appellees had the same opportunity enjoyed by other people to seek redress against him in the courts, for, unlike themselves, he possessed no immunity. True, the Committee did not prevent him from exercising his right; he did succeed in making his message public. But the statute in question (§ 43) must be conceded a more liberal range than that. Appellant is entitled not only to exercise the right but to be protected against official reprisal for having exercised it.[9] And considering his pleading as a whole it is rationally possible to believe that the Committee purposely undertook, under an appearance of regularity, to intimidate, punish and oppress him for having done what he did. The precipitate convening of the Committee, the hurried summoning of appellant to attend upon it, the abrupt dispatch of telegrams to prosecuting officials urging the institution of perjury charges, the gross

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[9]Bomar v. Keyes, 2 Cir., 162 F. 2d 136. And cf. Picking v. Pennsylvania R. Co., 3 Cir. 151 F. 2d 240; Burt v. City of New York, 2 Cir., 156 F. 2d 791; Terminiello v. Chicago, 337 U. S. 1 (1949); Douglas v. Jeanette, 319 U. S. 157 (1943).

impropriety of incorporating into the Committee minutes an allegedly false record ascribing to the witness the commission of infamous crimes, all may serve to lend color to the inferences of malicious and purposeful oppression sought to be drawn in the pleading. Even the course of questioning, innocent as it may seem when considered by itself, may be thought a calculated endeavor having no other purpose than that of putting the witness in a situation where he might be prosecuted for a criminal offense.

We express no opinion as to where the truth lies. Our purpose is merely to point out that the alleged circumstances of this case are too ambiguous and complex to warrant judgment on the complaint alone. The motion to dismiss it for insufficiency should have been denied and the defendants required to answer. Nor do we wish to be considered as expressing settled views on the law of the case, other than that pertaining to the consequences of an unwarranted interference, if any there was, with the right of freedom of speech.

The case as against appellee Robinson stands on a different footing. He was not himself acting officially or under color of authority. The complaint alleges that before the service of the subpena and after the content of the circulated petition had become known, appellee Tenney "immediately communicated by telephone with defendant Elmer E. Robinson advising him of the charges contained in said petition and the stated purpose of

the same." Then and there, it is alleged, the two discussed ways and means of best thwarting appellant's charges and defeating their purpose, and agreed that a hearing should be held by the Committee on the following day at which Robinson should appear as a voluntary witness and deny the truth of the charges. It is more than doubtful whether these allegations are sufficient to implicate Robinson in a conspiracy with the Committee to abridge any of appellant's federally protected rights. We are unable to say that the court was in error in dismissing the complaint as to him.

Otherwise the judgment of dismissal is reversed and the cause remanded for further proceedings.

[Endorsed]: Filed June 30, 1950.

PAUL P. O'BRIEN,
Clerk.

United States Court of Appeals
for the Ninth Circuit

No. 12430

WILLIAM PATRICK BRANDHOVE,
Appellant,

vs.

JACK B. TENNEY, et al.,
Appellees.

JUDGMENT

Appeal from the United States District Court for the Northern District of California, Southern Division.

This Cause came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California, Southern Division, and was duly submitted.

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed, as to appellant Robinson, otherwise, the judgment of the said District Court be, and hereby is reversed and this cause be, and hereby is remanded to the said District Court for further proceedings, with costs in this court in favor of the appellant and against the appellees, other than Robinson.

It is further ordered and adjudged by this Court

that the appellant recover against the appellees, other than Robinson, for his costs herein expended, and have execution therefor.

Filed and entered June 30, 1950.

/s/ PAUL P. O'BRIEN,
Clerk.

United States Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Wednesday, August 9, 1950.

Before: Healy, Circuit Judge:
Mathes and Driver, District Judges.

[Title of Cause.]

ORDER DENYING PETITIONS FOR HEARING

Upon consideration thereof, and by direction of the Court, It Is Ordered that the petition of appellant, filed July 27, 1950, and the petition of appellees other than Robinson, filed July 28, 1950, both within time allowed therefor by rule of court, for a rehearing of above cause be, and each of them hereby is denied.

United States Court of Appeals
for the Ninth Circuit

[Title of Cause and Number.]

CERTIFICATE OF CLERK, U. S. COURT OF APPEALS FOR THE NINTH CIRCUIT, TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

I, Paul P. O'Brien, as Clerk of the United States Court of Appeals for the Ninth Circuit, do hereby certify the foregoing one hundred, and forty eight (148) pages, numbered from and including 1 to and including 148, to be a full, true and correct copy of the entire record of the above-entitled case in the said Court of Appeals, made pursuant to request of counsel for the appellees other than Robinson, and certified under Rule 3 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Court of Appeals for the Ninth Circuit at the City of San Francisco, in the State of California, this 30th day of August, 1950.

[Seal] PAUL B. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1950

No. 338

ORDER ALLOWING CERTIORARI—Filed December 11, 1950

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.